United States Court of Appeals for the Second Circuit

APPENDIX

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P 15

77-4146

United States Court of Appeals
FOR THE SECOND CIRCUIT

LLOYD CARR & CO., LLOYD CARR FINANCIAL CO., JAMES A. CARR AND CHARLES P. LEMIEUX III,

Petitioners,

against

COMMODITY FUTURES TRADING COMMISSION,

Respondent.

Petition for Review of Order of the Commodity Futures Trading Commission

APPENDIX TO BRIEF OF PETITIONERS
VOLUME II
TRANSCRIPT OF HEARING
March 9, 10, 11, 15, 1977

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UNITED STATES COURT OF APPEALS
FILED
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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a Partnership, Lloyd Carr Financial Co.,
James A. Carr, Charles P. LeMieux, III

CFTC DOCKET NO. 77-6

VOLUME II

PART 2 OF 5 PARTS

UNITED STATES OF AMERICA

COMMODITY FUTURES TRADING COMMISSION

WASHINGTON, D.C.

I, Deedra K. Jones, do hereby certify that I am Hearing Clerk of the Commodity Futures Trading Commission, an independent regulatory agency of the United States of America; that in that capacity I am custodian of and familiar with the official public dockets of this Commission; that the annexed and foregoing are true and correct copies of the original docket, In the Matter of James A. Carr, Charles P. LeMieux, III, d/b/a/ Lloyd Carr & Co., a Partnership, Lloyd Carr Financial Co., James A. Carr, Charles P. LeMieux, III CFTC Docket No. 77-6, Volumes 1 thru 5.

Part 2 of 5 Parts

In testimony where I have
hereunto caused the Seal
of the Commodity Futures
Trading Commission to be
affixed and my name subscribed
in the District of Columbia
this 30th. day of August, 1977.

William T. Bagley, Chairman

By:

Deedra K. Jones, Hearing Clerk
Office of Hearings and Appeals

COMMODITIES FUTURES TRADING COMMISSION

- -x

In the Matter of:

JAMES A. CARR, and CHARLES P. LE MIEUX III,
d/b/a LLOYD, CARR & CO., A PARTNERSHIP,
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL CO.
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

No. 77-6

JAMES A. CARR

CHARLES P. LE MIEUX III,

Respondents

- -x

John McCormack Post Office and
Federal Building
Room 932
Post Office Square
Boston, Massachusetts

Wednesday, March 9, 1977

The above-entitled matter came on for hearing pursuant to Notice, at 10:00 a.m.

BEFORE:

Honorable GEORGE H. PAINTER, Administrative Law Judge

APPEARANCES:

RICHARD LEVIE, Esq.,
and
MICHAEL STEWART, Esq.,
and
ELLEN MELTZER, Esq.,

Commodities Futures Trading Commission, 2033 K. Street, NW, Washington, D. C. 20851; appearing on behalf of the Commission.

APPEARANCES (Continued):

CHARLES HECHT, Esq., and HAIG COSTIKYAN, Esq.,	Law firm of Charles Hecht, 60 East 32nd Street, New York, New York 10017; appearing on behalf of the Respondents.
G. LAMAR CRITTENDEN, Esq.,	Law firm of Barrett & Lamont, 65 William Street, Wellesley, Massachusetts 02181; appearing on behalf of the Respondents.

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PROCEEDINGS

10:15 a.m.

JUDGE PAINTER: On the record.

Now, for the record, first, I want the record to show we have a hearing, Docket No. 77-6. Now, would counsel for the Division identify themselves for the record?

MR. LEVIE: Richard Levie and Ellen Meltzer.

JUDGE PAINTER: Would you give your telephone number, too, in the event some other interested party might need it?

MR. LEVIE: For Richard Levie it's 202-254-7424.

JUDGE PAINTER: And for Ms. Meltzer?

MR. LEVIE: And for Ms. Meltzer it's 212-791-0796.

JUDGE PAINTER: And for the Respondent?

MR.LEVIE: Oh --

JUDGE PAINTER: Correction?

MR. LEVIE: 0796, it got lost in the cough.

MR. HECHT: For the Respondents the law firm of Charles Hecht, Suite 1760, 60 East 42nd Street, New York New York; and with him is a counsel who's a counsel to my firm; and also a counsel is Lamar --

MR. CRITTENDEN: Crittenden, C-r-i-t-t-e-n-d-e-n.

MR. LEVIE: Might I ask through the Court if Mr. Hecht is entering an appearance on behalf of all four Respondents named in the Complaint?

JUDGE PAINTER: Is that so, Mr. Hecht?

MR. HECHT: Yes.

MR. LEVIE: Thank you.

JUDGE PAINTER: Thank you.

Did you give your telephone number, Mr. Hecht?

MR. HECHT: No, I'll give it now.

It's 212-490-3232.

JUDGE PAINTER: Fine, thank you.

Now, Mr. Hecht, you indicated before we went on the record that you had filed a petition with Judge Fineberg --

MR. HECHT: Of the Second Circuit.

JUDGE PAINTER: Of the Second Circuit.

Would you please give us a statement regarding those matters?

MR. HECHT: Yes, Your Honor.

One of the matters and allegations in this Complaint is that Lloyd, Carr was doing business and they were not yet registered.

That provision, Section 32.3 of the new regulations is a subject of an appeal before the Second Circuit Court of Appeals upon which decision was reserved on February 9. Subsequent to February 9 certain events transpired in this particular litigation, i.e., the motion for expedited procedures filed by the Staff and ordered by the Commission.

JUDGE PAINTER: And before we get into the argument, Mr.

Hecht, could you just simply state whether Judge Fineberg has requested that I should stay with proceeding?

MR. HECHT: No, Mr. Guidarro, the Clerk -- I couldn't get through -- as is the normal custom, the Clerk in emergency petition -- I advised him that the hearing was presently scheduled to begin at 10:00 o'clock promptly. He said, "would you confer with counsel for the CFTC to see if they are willing to just stay that proceeding while the Court is considering the papers."

JUDGE PAINTER: Have you left word with someone outside to call you and notify you should Judge Fineberg ask me to stay this?

MR. HECHT: Yes, I have.

We have someone down at the company, the same gentleman who served the papers this morning on the CFTC.

JUDGE PAINTER: Fine.

We will proceed with this hearing as scheduled and if we get an appropriate request from Judge Fineberg we will certainly stay it.

MR. HECHT: Okay.

Well, that would be the formal request for a stay. They're saying while they're considering it are you willing to stay the hearing? If not, can I have Mr. Crittenden or Mr. Costikyn so call Mr. Guidarro that we are proceeding with the proceeding?

JUDGE PAINTER: That's fine with me.

MR. HECHT: Thank you.

JUDGE PAINTER: Now, back to the business at hand.

As the parties are aware the Commission has directed that we conduct an evidenciary hearing. We won't have argument here. We will simply take evidence. The moment this hearing is concluded I will transmit the record to the Commission for their consideration.

I do want to ask one hypothetical of Mr. Levie, just for my own enlightenment.

Mr. Levie, if this were January 17 and you had the current application of Lloyd, Carr & Company, as distinguished from Lloyd, Carr Financial; James Carr; Charles LeMieux, if you had on January 17 the application of Lloyd, Carr & Company would we be in a hearing today?

MR. LEVIE: Yes, as long as it had not been approved.

JUDGE PAINTER: We would?

Well, if you had that would there be grounds for denying the approval of that application if this were January 17, 1977?

MR. LEVIE: Yes, because of the financial record violations and refusal of access to records. We would still be here. There would still be grounds for proceeding with this matter.

JUDGE PAINTER: I'm a little lost on the financial records?

MR. LEVIE: One of the allegations relates to the failure of Lloyd, Carr & Company to have appropriate books and records as required by the regulations under the Act.

JUDGE PAINTER: Required as of January 17?

MR. LEVIE: Yes, that was --

JUDGE PAINTER: Before January 17 required?

MR. LEVIE: Any company applying for registration as an FCM, regardless of whether they're going to be doing business in options or futures is required under regulations existing prior to January 17 to maintain certain books and records.

JUDGE PAINTER: That's fine. Thank you.

Now, I will briefly run over what I perceive to be some of the major issues involved here, and then I want to go right into the evidence.

MR. HECHT: Your Honor, a couple of preliminary things before -- I'd like to make a request for a pre-hearing conference so that maybe we can crystalize the issues.

Secondly, I think someone should report on the status of the proceedings before Judge Tauro because he retained jurisdiction pursuant to an Order with respect to certain aspects of this proceeding, and he made it an order of that Court.

JUDGE PAINTER: Make your statements, but I want them concluded by at least twenty minutes to eleven.

I want to get into the evidenciary hearing on this without furt[illegible] delay.

Take [illegible] .nutes, Mr. Hecht, and give me your report?

MR. HECHT: Okay.

We have some preliminary motions. We have a motion to dismiss, too.

JUDGE PAINTER: Those motions would be -- I'm sent here by the Commission. I don't have any such authority to dismiss.

MR. HECHT: Well, one of the representations made to the Court yesterday by Mr. Stewart, and the transcribe is due from Mr. Curry (we've ordered it on an expedited basis and explaining the problem), is that you were in a position to rule on motions, and I raised my position down below was that how I interpreted the Commission's Order is that you were not permitted to rule on any motions.

And Mr. Stewart's position before Judge Tauro was that you were permitted to rule on motions.

JUDGE PAINTER: Mr. -- you will make a motion to dismiss and I will deny that motion. I have that authority. Thank you.

MR. HECHT: And I'm also making a motion that we have a pre-hearing conference in accordance with the rules because as of Monday when you were available, and I was available, and the Staff was available we were already up here on a related matter in the Federal Courts; and I think it would be in the best interest of all parties to spend an hour to clarify what the issues are and what the nature of the case is to help the Court, if it so desires.

It's authorized by the rules.

JUDGE PAINTER: The problem is I happened to have Mr. Thompson call your -- attempt to get in touch with you and Mr. Levie last evening. We were unsuccessful on both scores.

It was my hope that we could have met informally to have done this. I want to preserve what little time we have in view of the message left at my door this morning that apparently Mr. Levie left that to accommodate you, Mr. Hecht, we are to adjourn some time near midday on Thursday and again on Friday.

That leaves very little time to take evidence, and I'm here to take evidence.

MR. HECHT: I don't know how long the evidence is going to take, and I presume the Respondents will be able to put in witnesses if there's an affirmative defense. I mean I presume we're entitled to put in witnesses.

JUDGE PAINTER: So, the request for a pre-hearing conference is denied.

Anything further?

MR. HECHT: I also make a request and ask the Division to respond.

In view of Judge Tauro's ruling, which he has retained jurisdiction for certain purposes, I think it would be in the best interest of all parties that we wait until the transcript of that hearing is prepared, and Mr. Crittenden has spoken to Mr. Curry, the Court Stenographer, to expedite it on a rush rush basis.

JUDGE PAINTER: Your request is denied.

MR.HECHT: And the other item to take up is there is outstanding a subpoena from the Commission, and without waiving our rights on whether or not it was properly served, Mr. Levie and I spoke on the phone last night and we came to a basic agreement about which documents would be furnished, if available, with one exception where we had a disagreement with respect to whether or not a certain item within a form could be dropped out for the protection of my clients.

And that concerns the order forms which are commonly called the confirmation slips relating to the customer's names. All the other information on the form would be xeroxed. It's a tremendous job and before I instructed the bookkeeping department to start xeroxing I think the appropriate thing is to come down -- oh, according to Judge Tauro's Order we should go back to him, but if we can work it out here and there was a ruling here on that particular --

JUDGE PAINTER: What kind of a ruling do you want from me?

MR. HECHT: Do you want to explain, Mr. Levie, exactly -- it's a technical thing, but we can explain it to you.

JUDGE PAINTER: All right.

Mr. Levie?

MR. LEVIE: If I might very briefly give Your Honor my understanding of what transpired before Judge Tauro as it applies solely to our appearance here this morning.

My understanding was that in Judge Tauro's Court yesterday counsel for both sides entered an agreement of court, or stipulation which has the order of court per Judge Tauro. That the Commission would waive any requirement of subpoena of it's own -- would not require Mr. Hecht to go through the formal requirements of 1068 to subpoena by written motion Commission employees. He provided us with a list of four employees. We have assured him that they will be present.

At the same time Mr. Hecht stated that he would provide four individuals at this hearing, and Mr. Carr, Mr. Gawanne, Mr. Shuster, Miss Shaffer, all employees and in one case the principal of Lloyd,Carr.

Acting in reliance on his presentation in Court we are here this morning expecting them to be here.

And the final matter we dealt with before Judge Tauro was with respect to the subpoena of the Commission for certain books and records. Judge Tauro seemed to ask us can the parties get together and narrow it down. Mr. Hecht made the argument that it was overly broad. From our point of view, without waiving that, we said "yes, we'll talk."

And we did talk -- Mr. Hecht and I talked last night, and we were able to narrow the subpoena down from 14 items to approximately six items. And the only point of difference, I believe, is whether or not the customer's names should be blocked out, and we also agreed to accept copies, and we also told them if you bring your general ledgers here today with copies let us look at them. We'll give you back the originals so that it does not interfere with your business.

And that basically is the position of the Commission. That we cannot take the position in this hearing or before Judge Tauro that we are willing to accept documents that are in any way altered by the party from which they are subpoenaed.

JUDGE PAINTER: That souhds as though you did reach some agreement before Judge Tauro, and let us put it this way, if either of you think that the other failed to comply with this, and since apparently Judge Tauro has a great interest in this proceeding; Commissioner Bagley has a great interest in this proceeding. Take your grievances up with those parties at the appropriate time.

MR. HECHT: No, what we're saying, Your Honor, is that at this stage a technical question -- we're not altering documents.

Our position is that as part of the Commission's Complaint the names of the customers are not germain to their case. We have had --

JUDGE PAINTER: But I would certainly be sympathetic to Mr. Levie in that I would not want altered documents admitted into the record unless the parties agreed that certain could be blocked out.

Now, if you can't agree the names will be there.

MR. HECHT: Okay.

Then my position is, and I will preserve it for the record and I think it's very important, and it's been worked out in Federal Courts, this kind of arrangement, for decades in certain confidential information, that with respect to an FCM application the names of the customers are obviously a confidential trade matter. In the past and I'll make it a record in this proceeding there have been problems with the Division of Enforcement contacting customers, and there is now presently a injunctive proceeding before -- pending before Judge Gagliardi which involves the actions of the Division of Enforcement with respect to British American.

In addition, it was also raised as an affirmative defense in the British American administrative proceeding before Judge Hunt and he took evidence on it, feeling that that could be a proper defense in an administrative proceeding.

And since I was the one who --

JUDGE PAINTER: Well, Mr. --to shortcut this, you can at least bring those matters in and produce them or turn them over to me in camera for my inspection with the blocked out versions to Counsel Levie.

I will·grant your motion tq that extent.

MR. HECHT: Okay, fine.

I have no problem with that. It will take, because we're talking about I'd say a couple of hundred confirmation slips, Dick -- I saw the box -- that we will have to run through in effect two runs, and I will call the company at the appropriate recess and tell them the procedure you want and they will run through --

JUDGE PAINTER: Could Mr. Crittenden take care of that for you while we proceed with this hearing? I want to get on to the evidence here.

MR. LEVIE: In that regard, Your Honor, I think the record should be clear that we offered, in lieu or requiring per a subpoena production of these records or all of these records, that the parties enter a stipulation that Lloyd, Carr & Company, one of the Respondents here, were in fact doing business.

That is, soliciting orders and accepting monies for commodity option transactions after January 17.

JUDGE PAINTER: Is that the sole purpose?

MR. LEVIE: That's the purpose of these records, Your Honor.

JUDGE PAINTER: Mr. Hecht, can't you stipulate that and save your company a lot of time and trouble?

MR. HECHT: Your Honor, (a) it's not so simple; (b), let me just straighten out one technical point.

What Mr. Crittenden suggested is we can actually bring the originals, to save double xeroxing, we can bring the original company records to you for review, and run off a copy with the name, and this way we can speed up the process by about two hours.

JUDGE PAINTER: But you don't want to stipulate that your clients have engaged in business of options trading since January 17?

MR. HECHT: Well, it's not that I don't want to concede that, that under the Statute as pointed out in our motion to dismiss may not be -- is not sufficient because 4c(b) of the Act specifically requires hedging -- I'll read the exact language --

JUDGE PAINTER: Well, bring in the books and records. That won't be necessary. Just bring them in as we had directed.

MR. HECHT: Okay.

Now, I want to say we're going to bring you original records to you.

JUDGE PAINTER: To me with blocked out copies to Mr. Levie.

MR. HECHT: No, it's not -- the only thing that's going to be blocked out is the customer's name.

JUDGE PAINTER: Correct.

MR. HECHT: Everything else will be as is.

JUDGE PAINTER: Very well.

MR. CRITTENDEN: Since I'm going to be calling the company, Mr. Levie, can we clarify Mr. Levie precisely what records we're talking about?

MR. HECHT: We already know.

The company has been on notice last night, and he knows exactly. We even worked out the confirmation slip number. It's number seven. It's already been worked out.

JUDGE PAINTER: Mr. Levie?

MR. LEVIE: Lest there be any confusion, my understanding of that conversation last night --

MR. HECHT: There were some other things --

JUDGE PAINTER: Mr. Levie, Mr. Levie.

MR. LEVIE: With respect to the attachment to the subpoena, Items 3, 4, 6, 7, 8, 10 -- no, not 10 -- 14 are to be produced. And it should be clear that included within the request for this production are two specific items, lest there be any confusion.

That is, a Form No. 7 which is part of an eight part form, and an option order form which in the past, at least, has been yellow.

JUDGE PAINTER: That's clear. Now --

MR. HECHT: And as to the other forms if it's included in the originals would be with the two -- I think we should extend the originals to Judge Painter for his review if they have any customer names and the copies without the customer's names to Mr. Levie.

One thing I want, Judge, since these are original records which are needed in the day to day operation, I presume you will give them back after you have reviewed them.

JUDGE PAINTER: I will return them to make certain that they conform with the copies you have provided Mr. Levie. I will have Mr. Thompson perform that laborious chore for me.

Yes, Mr. Levie?

MR. LEVIE: Before Mr. Crittenden leaves, Your Honor, for the record the Division would oppose the entry into evidence of any documents with blocked out information of any type.

JUDGE PAINTER: Your objection is noted for the record.

MR. LEVIE: Thank you.

The second matter, Your Honor, is pursuant to the representation made by Mr. Hecht before Judge Tauro yesterday we have acted and rely upon the presence of those four individuals. That is, James Carr, Messrs. Shuster, Gawanne, and Ms. Shaffer as our first witnesses.

I would expect them to be here --

JUDGE PAINTER: I am sure Mr. Hecht, as a member of the bar, and if he so told Judge Tauro he would produce these people I am confident he will do so.

MR. HECHT: Your Honor, that's why we need the transcript of what was said before Judge Tauro. Three of the witnesses are on call. Mr. Carr was out of town last night and I so told you, but we got Mr. Shuster up here from Greenwich, standing on call; Ms. Shaffer; and Mr. Gawanne.

JUDGE PAINTER: Very well.

Have them ready to go on in ten minutes because we're getting that near.

Now, I have a few more remarks and then we're going into the evidenciary part of this hearing.

MR. HECHT: Oh, there's one thing, Your Honor.

We just got a call from Mr. Guidarro, and Mr. Costikyn spoke to him and I think he should advise the Division of what Mr. Guidarro said.

MR. COSTIKYN: Mr. Guidarro asked me to advise the CFTC to get answering papers in on our motion for a stay promptly.

JUDGE PAINTER: Well, Mr. Levie, or his co-counsel will take care of that matter. They're on notice. Thank you.

MR. CRITTENDEN: May I ask Mr. Levie one further question, please, with respect to the records?

JUDGE PAINTER: Go ahead.

MR. CRITTENDEN: Are we talking about records from January 17 on, is that correct?

MR. LEVIE: Yes.

MR. CRITTENDEN: Thank you.

JUDGE PAINTER: Now, I have read the Complaint. I maybe somewhat in error in certain regards, but at least I see these issues.

One is, Lloyd, Carr & Company, as distinguished from Lloyd, Carr Financial or Charles P. LeMieux and James Carr, was Lloyd, Carr & Company fit or unfit to be registered as a futures commission merchant.

Two, should Lloyd, Carr Financial as distinguished again from Lloyd, Carr & Company and from James Carr and Charles LeMieux, should Lloyd, Carr Financial's registrations as a commodity trading advisor be revoked.

Three, should a cease and desist order be issued against Lloyd, Carr & Company; Carr, LeMieux pursuant to Section 6(c) of the Act.

Four, should civil penalties be assessed against any Respondent for violations of the Act and any regulations pursuant to 6(b).

Five, should the Respondents be prohibited from trading on contract markets pursuant to 6(b).

And on the last matter, Mr. Hecht, you should be on notice that you understand, of course, that I don't assess penalties period, in this proceeding.

But it behooves you to get evidence in the record concerning your client's net worth because this is one of the criteria to be considered in the imposition of any possible penalties.

Now, Mr. Levie, would you put on your case, please?

MR. HECHT: Your Honor, I just want to make one preliminary -- do you feel it is appropriate to analyze the substantive cause of actions and the conclusory actions.

For instance, the nature of the alleged violations of the Act you think is appropriate; and (b), I think it should be clarified for the record which would make this hearing a lot easier that Lloyd, Carr Financial has been doing business as Lloyd Carr; and that's how they register everywhere and that would save a lot of trouble, I think, with trying to identify which partnership Respondent you're talking about.

JUDGE PAINTER: Mr. Hecht, as I see the record including the pleadings you have filed there was an application on October 1 by Carr and LeMieux doing business as Lloyd, Carr Financial; an application for registration as an FCM.

I know that on a later date, apparently January 17, an application on behalf of Lloyd, Carr Financial was filed, and that's somewhat different from above. Apparently an application we're vitally concerned with here, an application from Carr and LeMieux doing business as Lloyd, Carr & Company on January 25, 1977.

MR. HECHT: Well, I think that's where the confusion is on the record, because the original application was amended at the request of the Staff so that we could all conform it -- because the company was being represented to the public as Lloyd, Carr and Co., and it was at the request of the Staff so that they felt it would be better to do it that way, but it's in substance the same application.

JUDGE PAINTER: Well, we do have some variations in names here. In fact, as I see from the record, apparently I believe on the second application it was returned on the basis that the assets of Lloyd, Carr & Company were included as assets of Lloyd, Carr Financial.

Now, I don't know what your problems were concerning these applications, but I am here to take evidence concerning the issues that I have just stated, as I see them. The Commission may see those issues a little bit differently and so may you.

MR. HECHT: I'm not trying to disagree or be argumentative. I'm saying that you're going to find, I think, as we get into the proceeding the Staff has gone through this and the persons know who spoke to my client that this was done in consultation with the Staff because they felt -- we felt the proper legal entity was Lloyd, Carr Financial, but --

JUDGE PAINTER: Well, Mr. Hecht, this whole hearing may produce no evidence to show a sin of any kind on the part of your clients. I have no idea what's going to turn up, but I'm anxious to have Mr. Levie tell you what he thinks constitutes cause, and then you're going to have your opportunity to say it isn't so.

All right, Mr. Levie.

MR. LEVIE: Your Honor, I don't wish to try the Court's patience, but having acted upon a representation by Mr. Hecht, I expected those people to be my first four witnesses.

Now, since --

JUDGE PAINTER: Who are you calling?

MR. LEVIE: I will call Miss Shaffer as my first witness?

MR. HECHT: She's calling them right now. They're five minutes away. They're on call. They're coming right over. It's five minutes from here to their office.

JUDGE PAINTER: Well, five minutes won't strain our nerves at this point.

You're going to have the witness here in five minutes, Mr. Hecht?

MR. HECHT: Mr. Crittenden went out and called and said "get them over here."

JUDGE PAINTER: Let's take a five minute recess.

Off the record.

(Short recess taken.)

JUDGE PAINTER: On the record.

Now, Mr. Hecht wants to make a very short statement regarding his objections before we proceed with taking evidence.

MR. HECHT: It is the position of the Respondents that the ordering of expedited proceedings in this particular matter is a complete denial of due process, since I do not have time, or have not been given time to state my full reasons why it is a denial of due process and why it is violative of the Commissions Rules of Practice and the Administrative Procedures Act.

I specifically request permission from the Court that the affidavit filed by me in the case entitled --

JUDGE PAINTER: Is this a motion to dismiss?

MR. HECHT: No.

In the case filed yesterday in the United States District Court, 77 CIV 666-T be incorporated as an appendix to the record.

JUDGE PAINTER: Granted.

Do you have a copy of the document to turn over to the Reporter?

MR. HECHT: Yes, we do.

(Document turned over to Reporter.)

JUDGE PAINTER: Would you please mark that as Respondent's Exhibit 1. That's the simplest way to take care of it.

(The document above- referred to
was marked Respondent's Exhibit
No. 1 for identification.)

MR. HECHT: Can I request the Court's permission during lunch time I'll have this xeroxed because this is only copy where the decision of the Judge is written down and noted.

JUDGE PAINTER: Granted. We're ready to take evidence.

Mr. Levie.

MR. LEVIE: Thank you, Your Honor.

Your Honor, as our first witness we call Marilyn Shaffer.

Whereupon,

MARILYN SHAFFER

was called as a witness and testified as follows, after having been duly sworn:

DIRECT EXAMINATION

Q (By Mr. Levie) Ms. Shaffer, would you state your full name for the record, please?

A Marilyn Miles Shaffer.

Q And where do you reside, Ms. Shaffer?

A In Cambridge.

Q By whom --

A Do you want my address?

Q Please?

A Seven and a half Wooler Street, Cambridge, Mass. 02138.

Q And by whom are you presently employed?

A Lloyd, Carr & Company in Boston.

Q In what capacity?

A I am a broker.

Q Ms. Shaffer, are you represented by counsel here today?

A Yes.

Q Have you had an opportunity to consult with counsel?

A Yes.

Q And who is that counsel?

A Mr. Hecht, there.

Q And you're also aware that Mr. Hecht represents the other respondents in this action, correct?

MR. HECHT: Objection to the form of the question. This Witness is not a Respondent.

JUDGE PAINTER: Sustained.

Q (By Mr. Levie) Ms. Shaffer, are you aware that Mr. Hecht represents Lloyd, Carr Financial Co.; Lloyd, Carr & Co.; James Carr; and Charles P. LeMieux?

A Yes.

Q With that knowledge that he represents these other individuals and companies are you still willing to have him act as your counsel in these proceedings?

MR. HECHT: Objection.

I think this is irrelevant. She's testifying here as a witness. I will -- I'm going to move to strike the testimony now because the Division has not produced a copy of the subpoena --

JUDGE PAINTER: I'll sustain your objection.

Proceed with the questioning of the Witness.

MR. LEVIE: Your Honor, would you advise the Witness at this time as to whatever Fifth Amendment rights she might have?

JUDGE PAINTER: No, but I'll permit you to do so, Mr. Levie.

Q (By Mr. Levie) Ms. Shaffer, I would inform you for the purposes of this record that you are not required to answer any question which can subject you to any criminal fine or penalty, and you may not be compelled to violate your right against self incrimination. Do you understand that?

A Yes.

Q Do you have any questions about that?

A No.

Q Do you wish to consult with counsel about that?

MR. HECHT: I would like to object at this stage. I think this method of questioning is highly improper. You haven't even put in that she was duly subpoenaed. I think it's trying to intimidate the Witness, and I just think it's improper and unethical in every respect.

JUDGE PAINTER: I'll sustain the objection. We have the Witness here. She is represented by counsel. So, if you have questions to put to her concerning the issues involved in this proceeding please do so, sir?

MR. LEVIE: If you might, Your Honor, for the record it was for the Witness's protection.

Q (By Mr. Levie) Ms. Shaffer, did you receive a subpoena in this matter?

A No, I didn't.

MR. LEVIE: Your Honor, may I have this marked as Division Exhibit No. 1 for identification?

JUDGE PAINTER: Any objection, Mr. Hecht?

MR. HECHT: Yes. I have one quick question for the Staff. How come a copy was not forwarded to me as counsel --

JUDGE PAINTER: Direct your questions to me, sir?

MR. HECHT: Okay.

Your Honor, I think I would like to ask a couple of questions of why or if a copy was ever served on my office and if not why not? Because they knew I represented Lloyd, Carr & Co. as counsel?

JUDGE PAINTER: Was it certain at that time, Mr. Hecht, that you represented this particular witness?

MR. HECHT: No, they knew I represented the Respondent, and in care of Lloyd, Carr & Co. is how the subpoena is addressed.

JUDGE PAINTER: I see no need for them to respond to that.

Do you have any objections to the document otherwise?

MR. HECHT: Okay.

I object to the document. As far as identification I don't have to object now. They haven't moved for its admission, Your Honor, or laid a foundation.

JUDGE PAINTER: Thank you.

MR. LEVIE: Can I ask the Reporter to have it marked, YOur Honor.

(The document above-referred to was marked Division Exhiibt No. 1 for identification.)

Q (By Mr. Levie) Ms. Shaffer, I show you what has been marked as Division Exhibit No. 1 for identification. Have you ever received a document in that form and in that manner, containing those notations?

A No.

Q Have you ever seen a document similar in content to Division Exhibit 1?

A No.

MR. LEVIE: May I have this marked Division Exhibit 2, please.

(The document above-referred to was marked Division Exhibit No. 2 for identification.)

MR. LEVIE: Your Honor, I'm showing Mr. Hecht a copy of Division Exhibit 2 for identification.

(Document shown to counsel.)

Q (By Mr. Levie) I show you, Ms. Shaffer, what has been marked as Division Exhibit 2 for identification. Have you ever seen that document either before?

A NO.

Q Do you recognize the signature on Division Exhibit 2?

A Yes.

Q Whose signature is that?

A Jack Coulish.

Q And who is Mr. Coulish -- would you spell his name for the record, please?

A I'm sorry. I don't think I know how to spell it, C-o-u-l-i-s-h, perhaps.

Q Who is Mr. Coulish?

A He is a branch manager, at Lloyd, Carr.

Q And was he employed as a branch manager at Lloyd, Carr in February of 1977?

A Yes.

Q Is he in the courtroom here today?

A No.

Q Did Mr. Coulish confer with you in February or March of 1977 regarding a subpoena issued in your name?

A No.

JUDGE PAINTER: I want to point out, Mr. Levie, that the Witness is now here and is presumably prepared to testify, and I wonder if we may clutter up the record with a great deal of questions of this nature.

MR. HECHT: Well, I think what Mr. Levie is doing, YOur Honor, and I understand because I've been in his position and I am preserving my right to have the testimony stricken because there was improper service, and that is why I haven't objected to this line of questioning.

JUDGE PAINTER: I will direct the Witness to answer questions that are germain to this proceeding with or without the benefit of the subpoena. She is presently here.

MR. HECHT: I know, Your Honor, but I am preserving my objection. He knows that and he wants to lay the framework so that he has a basis, and I understand and that's why I haven't objected.

JUDGE PAINTER: Very well.

MR. LEVIE: We'll move on, Your Honor.

Q (By Mr. Levie) Ms. Shaffer, since January 17 of 1977 have you been employed at Lloyd, Carr & Company?

A Yes.

Q In what capacity?

A As a broker.

Q When did you first start employment there?

A I began December 7.

Q Of 1976?

A Yes.

Q What are your duties as a broker?

A I call interested investors to see if they'd be interested in investing in London Commodity Options.

Q And do you seek to obtain orders from those customers?

A Yes.

Q For the purchase of London Commodity Options?

A Yes.

Q And have you continuously engaged in that since January 17, 1977 until the present?

A Yes.

Q Who is Mr. James Carr?

A He is the owner of the company.

Q And did Mr. Carr hire you?

A No, he didn't.

Q Did Mr. Carr train you?

A He was partly involved in the training, yes.

Q And when you accept an order from a customer for the purchase of a London Commodity Option does Mr. Carr sign any Lloyd, Carr & Company forms?

MR. HECHT: Objection to the form of the question. The best evidence would be the forms and we're willing to produce them.

JUDGE PAINTER: Overruled.

Please answer the question, if you can?

THE WITNESS: The branch manager signs.

Q (By Mr. Levie) But has Mr. James Carr ever signed?

A The forms I don't think have a place for him to sign, and

I don't think he does. I'm not sure about that, however.

Q Ms. Shaffer, directing your attention to Division Exhibit 3, have you seen a form used by Lloyd, Carr that's similar to that represented on Division Exhibit 3?

A Yes.

(The document above-refrered to was marked Division Exhibit No. 3 for identification.)

Q And how would it be used in the operations of Lloyd, Carr?

A After we have taken an order from a customer we then fill this out, and then I, or we the brokers, give it to the branch manager who checks the accepted and signs it. We do not see if after this. So, I don't know about the bottom two things here.

Q So, is it your testimony that with respect to orders which have been placed for your clients that you have never seen James Carr's signature on any of the forms represented by Division Exhibit 3?

A That's right.

Q Since January 17,1977 to the present approximately how many commodity options have you sold?

A Four.

Q And how much was involved in -- or what was the cost to the customers of those options?

A One was $9,950; two were $4,520; and one was $3,900.

Q Since -- from the period January 17, 1977 to the present approximately how many potential customers have you contacted on behalf of Lloyd, Carr & Company in an effort to solicit orders?

A Wait, I'm sorry, those were just the orders for this month. There were more since January 17. I'm sorry. I wasn't thinking back that long.

Q Can you just give us an approximate number of orders and an approximate dollar value?

A Six at a total cost of around $25,000.

Q Have you applied for registration with the Commodity Futures Trading Commission as an associated person?

A Yes, I have.

Q And when did you apply?

A I don't know. I don't remember. Some time after Christmas.

Q When you filled out that application did you mail it directly to the Commission, or did you give it to someone else?

A We gave them to Tom Labus, who sent them in in a bunch.

Q Do you know when he sent them in?

A No, I don't.

Q Did you ever hear from the Commission whether your application had been processed?

A I got a letter about three weeks to a month ago saying that the check that had been to pay my application fee had bounced, and if the application was to be continued to be processed immediate payment would have to be made on $20 sent back to the CFTC within four days.

Q Did you send that money?

A Yes.

Q And have you received any notification to date whether your application has been processed?

A No, I haven't.

Q The Court's indulgence? (Pause.) Ms. Shaffer, when your customers send in money to pay for the commodity options were you notified of this fact?

A Yes.

Q How?

A The branch manager comes over and tells me "Mr. So and So's check has come in."

Q And you're subsequently issued a commission based on that, correct?

A Correct.

Q With respect to Mr. James Carr, was he in the office on a relatively daily basis for the period of January 17 to the present?

A Pretty much so. The last couple of weeks he's been in St. Louis.

Q Have you, from the period of January 17 to the present, had personal contact with James Carr?

A Yes.

Q In what respect? Or over what matters?

A I see him in the office.

Q Do you converse with him about business matters?

A No, usually he's too busy.

Q Did you ever see the checks or payment that your clients sent in to pay for the options which were purchased?

A No.

Q Was it the practice of Lloyd, Carr, as far as you know, not to pay their account executives commissions until the checks and payment of the options had cleared the bank?

A Right.

Q And you received approximately how much in commissions from January 17 to the present?

MR. HECHT: Objection to the form of the question. I don't see how that's related to the proceedings, what her personal earnings are, I think, her business and it's not an issue --

JUDGE PAINTER: Overruled.

I think it is germain. Answer if you can Ms. Shaffer?

THE WITNESS: I think I've earned approximately $2,800.

MR. LEVIE: No further questions, Your Honor.

JUDGE PAINTER: Any cross, Mr. Hecht?

MR. HECHT: Yes, Your Honor, while she's here.

CROSS EXAMINATION

Q (By Mr. Hecht) Miss Shaffer, how would you prefer I call you, Ms. Shaffer or Marilyn or how would you prefer?

A Marilyn.

Q Okay, Marilyn. When you became an employee at Lloyd, Carr & Co. were you required to go through a training program?

A Yes, I was.

Q Would you describe what transpired at that training program?

MR. LEVIE: Excuse me, Your Honor.

Might I ask for an offer with respect to relevancy?

JUDGE PAINTER: Overruled. I do want you to get the times down, but you're going to make this short, aren't you Mr. Hecht?

MR. HECHT: Your Honor, I m entitled to present a case and the issues --

JUDGE PAINTER: Go right ah[illegible] Hecht. I've overruled the objection.

Q (By Mr. Hecht) Did you go through a training program?

A Yes, I did.

Q Would you describe for the Court in your own words the general nature of the program?

A For the first week we had very intensive classes, all day long. The first part we learned what the market was; what commodities were; how they were traded on the International Exchanges and the London Metal Exchange; and the International Commodity Clearing House.

How options are bought and sold. Then each day we did a particular commodity in depth, coffee, cocoa, sugar. Then we did sales techniques and on Friday afternoon we each made a monitored call.

The next week consisted of our making calls, some of which were monitored by the branch manager, some of which were monitored by the whole class, which were then discussed. And we would meet every noon and every evening to discuss what had happened during the day. Any problems that had come up and how to handle questions that we didn't know, etcetera.

Q During the first week about how many hours a day was this training program going on?

A We were in the room from nine till twelve and from one to four, and then we had the option to listen to the other brokers from four to five; to listen to how they made their presentations.

Q And in that connection did the company give you any written materials to review?

A Yes, they did. We got the book Commodity Options by Kermit and Susanna Zeig, all of us did. We also passed out relative materials about the commodities market, about cocoa, coffee.

Q Marilyn, did you retain those documents?

A Yes, I have.

Q And at my request did you bring them here today to the Court?

A Yes, I did.

Q Do you know where they are?

(Counsel looks for documents.)

MR. LEVIE: Your Honor, at this point we would object to anything dealing with the training of this person insofar as it's irrelevant to the charges as to whether the company was doing business.

JUDGE PAINTER: Would you care to stipulate that this party, Ms. Shaffer, is a well trained broker?

MR. LEVIE: Your Honor, I cannot stipulate to that, but I think regardless of whether she is or she isn't it's irrelevant.

The only question is was she making calls to -- for Lloyd, Carr while they were unregistered and she was unregistered.

JUDGE PAINTER: I'm going to give Mr. Hecht a couple of more minutes on this matter. If he wants to submit these documents in I suppose the record can take it.

MR. HECHT: I think I should give a proffer of proof Your Honor.

One of the issues in this case as framed by this Court is are the applicants fit for registration. This definitely goes directly to the criteria because not only do you have to prove your charges, you have to make a showing the your agency, I presume they have an open mind, as to the type of people involved; the nature of training given to the people --

JUDGE PAINTER: Okay.

So, you proceed with showing that they properly trained their personnel.

THE WITNESS: May I say something?

JUDGE PAINTER: Yes, Ms. Shaffer, you may?

MR. HECHT: You want to say something?

THE WITNESS: Yes.

The first day's classes I had recorded in a bound notebook which I meant to bring and I didn't, and it's at home, but I can provide the Court with copies if they please.

JUDGE PAINTER: I think the value would be indeed remote and --

MR. HECHT: I would like to do it that we can file it as a later filed exhibit. We have --

JUDGE PAINTER: I'll consider it at that time.
Now, you've got a rather voluminous --

MR. HECHT: No, I have four copies --

JUDGE PAINTER: -- document there. Are you going to offer that in evidence?

Q (By Mr. Hecht) Are these one in the same or are these four copies of everything?

A Four copies of everything.

Q Okay.

A I didn't have time to collate them.

MR. HECHT: I would suggest that for the convenience of the Court that we file this as a Defendant's Group Exhibit A, rather than each one separately, and if you want to look at them, Mr. Levie, and don't have any problem I wouldn't go through them one by one --

JUDGE PAINTER: Well, describe Group Exhibit A?

MR. HECHT: Your Honor, I haven't seen these documents until now. She said she had --

THE WITNESS: May I describe them?

Q (By Mr. Hecht) Yes, why don't you describe them?

A A majority of it is class notes that I took in the first week's intensive training. There is xeroxed the first part of the Kermit Zeig book. Also there is xerox from an economic botany book, the section on coffee and cocoa and how it is grown. An article from Business Week about commodities.

JUDGE PAINTER: I will -- you may state for the record here what that constitutes. I will not admit that into the record. It will go along with the file as a rejected document. Even if I don't so it will get to the proper source at the proper time.

But I think it's encumbering the record with a lot of printed material that doesn't help a whit.

MR. HECHT: Your Honor, note my exception. I think it is --

JUDGE PAINTER: Noted for the record.

MR. HECHT: -- relevant.

JUDGE PAINTER: Proceed, Mr. Hecht.

Q (By Mr. Hecht) Marilyn, to your knowledge -- let me rephrase that. Are you aware of any litigation between Lloyd, Carr & Co. and the Commodity Futures Trading Commission?

A Yes, I am.

Q And what are you aware of?

A I am aware that previous to my employment there had been a case about double segregation which to my understanding Lloyd, Carr had won. Then I am aware -- I think we're taking the CFTC to Court about all of their regulations, as well.

Also, I'm aware that we -- there was an injunction to stop us from dealing options after the 17th that was seen here last month. And there's something in New York about a regulation.

Q And how did you -- are you aware -- do you know what this proceeding is about? That you're here today?

A Yes, I think so.

Q What is your understanding of this proceeding?

A That this is the leftover --

MR. LEVIE: Objection as to relevancy?

JUDGE PAINTER: Sustained.

This is not a lawyer we have here. She is aware of some problems they have, now --

MR. HECHT: I think it's relevant, Your Honor, because I think the Court's entitled to know that people have been kept apprised of this situation. They are in a position to answer customer inquiries about this and I think that's very important to how they operate their business.

JUDGE PAINTER: The objection is sustained.

So, anything more of this Witness, Mr. Hecht?

MR. HECHT: Yes.

Q (By Mr. Hecht) Remember you testified before about your associated persons application?

A Yes.

Q To your knowledge has any employee of Lloyd, Carr's individual associated persons application been accepted by the CFTC?

A I think there were two men who have been brokers there from -- for longer than I who already have their associated persons application. They already were, and they were applying for a more advanced one that costs more money.

Q Do you know what happened to theirs, the advanced?

A No, I don't.

Q These people had these AP applications before this litigation began in New York?

A When was that?

Q This litigation with respect to the regulations? Was it before November that these people -- to your knowledge were these people employees of Lloyd, Carr before November of 1975 -- '76?

A Yes.

Q And do you know what their names are?

A Irving Levine and I'm not sure who the other one was.

Q Okay. Is -- was Irving Levine employed by another company, if you know, before you came to Lloyd, Carr?

A Yes.

MR. LEVIE: Objection as to relevance.

JUDGE PAINTER: Overruled.

Let's get the answer?

THE WITNESS: Yes, he was.

Q (By Mr. Hecht) And do you know if he got his license when he was employed at that other company?

A No, I do not.

Q And to your knowledge have there ever been any customer complaints relating to your conduct?

A No, there haven't. Not to my knowledge.

Q And did you know how the CFTC got your name?

A No, I don't, and I'd like to know.

Q Has the company always treated you fairly?

A Yes, they have.

Q Have you ever heard any customer complaints about Lloyd, Carr?

A No.

Q Would you like to continue working for them?

A Yes, I do.

MR. HECHT: I have no further questions.

JUDGE PAINTER: I have one or two questions, Ms. Shaffer.

You said that you gave your application to a Mr. Tom Labus. Did you give him your personal check to go along as an application fee?

THE WITNESS: No, the company was going to take care of that for us.

JUDGE PAINTER: And who is Tom Lahus and how do you spell his last name?

THE WITNESS: He's the marketing manager of the company and his last name is spelled L-a-b-u-s.

JUDGE PAINTER: Thank you.

Anymore on redirect?

MR. LEVIE: Yes, if I may, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Levie) Ms. Shaffer, how many brokers have been employed at Lloyd, Carr & Company's Boston office from January 17 to the present?

A An expanding number. From 22 to now about 50.

Q And they've all been engaged, to your knowledge, in the solicitation of orders for commodity options?

A Yes.

Q And did Mr. James Carr participate in the training?

A Yes, he did. He spoke to us on about three different occasions encompassing about a day and a quarter, altogether.

Q What is the procedure for handling customer complaints that come in directly to Lloyd, Carr?

A What kind of complaints?

Q Someone calls up and says "I have a complaint against my broker Marilyn Shaffer." What would be the procedure?

MR. HECHT: Objection to the form of the question.

I think he needs to ask a question, what kind of complaint.

JUDGE PAINTER: All right.

If the complaint comes in what happens, Ms. Shaffer?

THE WITNESS: If it were my client I would try and handle it myself. If it were about something legal or something I felt wasn't a complaint against me, but was a complaint against the business or the -- I would call the branch manager.

Q (By Mr. Levie) Is there a set procedure for handling customer complaints against account executives?

MR. HECHT: Objection to the form of the question. There's no evidence in the record about procedures. She's testified that she's had no complaints, and that you've framed it as a hypothetical question.

JUDGE PAINTER: Overruled.

The Witness has indicated that there is so sort of a form or policy that she would follow, and I think Mr. Levie's entitled to establish or not establish that there is a company policy.

Proceed, Mr. Levie.

Q (By Mr. Levie) I think the question is still pending, Your Honor, whether there is a set policy?

A I think the policy is to call the branch manager.

Q Do you ever have occasion -- does the policy provide for discussion with James Carr regarding customer complaints?

A What --

MR. HECHT: Objection to the form of the question. I think you'll have to limit it to her knowledge.

JUDGE PAINTER: I'm certain she's not going to testify to something that is not of her knowledge.

The question is in this policy that may or may not be in effect at this company what happens when a complaint comes in, and if you know is it referred then routinely to Mr. Carr? Or ever referred to Mr. Carr?

THE WITNESS: Yes.

JUDGE PAINTER: It is referred to Mr. Carr?

THE WITNESS: He's at the top, and if it gets up to him he's the one that makes the decision on it.

Q (By Mr. Levie) From January 17 to the present in your efforts to sell commodity options for Lloyd, Carr & Company approximately how many persons have you contacted?

MR. HECHT: I'd like to object. It's outside the scope of the cross examination.

JUDGE PAINTER: Overruled.

I believe this is his direct witness. Answer the question if you can?

THE WITNESS: Since the 17th? I'd say approximately between one thousand five hundred and two thousand five hundred people.

Q (By Mr. Levie) If I understood your testimony to Mr.

Hecht on cross examination, you've indicated you were aware of the commodity option regulations set up by the Commodity Futures Trading Commission, correct?

A Yes.

Q And were you also aware in that regard that the regulations required persons selling commodity options to be registered with the Commission after the 17th of January?

A Yes.

MR. HECHT: Okay.

I'm going to object to this line of questioning. It's (a) outside the scope of your direct. It's outside the scope of the cross; and it's also outside the scope of the Complaint.

JUDGE PAINTER: Overruled.

Q (By Mr. Levie) And despite this knowledge you continued to sell options on behalf of Lloyd, Carr after the 17th of January without being registered, correct?

A I have sent in my application.

Q To your knowledge your application has not been approved? Correct?

A I didn't know whether it had been approved or not.

Q Some time at the end of February you became aware that your application had not been approved, correct?

A They didn't say it hadn't been approved. They said the check had bounced and that it had to have a check.

Q Did you understand that to be some sort of tacit approval for you to continue selling?

MR. HECHT: Objection to the form of the question.

JUDGE PAINTER: Sustained, sustained.

THE WITNESS: I don't mind answering that question.

JUDGE PAINTER: You have an attorney, Ms. Shaffer, and we will pay great heed to Mr. Hecht's advice to you.

THE WITNESS: Okay.

Your HOnor, may I have a drink of water?

JUDGE PAINTER: We'll go off the record for about two minutes to allow the Witness to get a drink of water.

Off the record.

(Short recess taken.)

JUDGE PAINTER: On the record.

Are we about finished with Ms. Shaffer, are we?

Q (By Mr. Levie) Ms. Shaffer, I show you Division Exhibit 4 for identification. Did you receive the original of that document?

A Yes.

(The document above-referred to was marked Division Exhibit No. 4 for identification.)

Q (By Mr. Levie) And when did you receive that?

A The 24th, I believe.

Q Did you inform anyone at the Boston office of Lloyd, Carr & Company of receipt of the original of Division Exhibit 4?

A Yes, I told -- I called up immediately.

Q Well, who did you talk to?

A To our accountant, Deborah.

Q What is her last name?

A Peterson.

Q Did you talk to anyone else at Lloyd, Carr's offices regarding Division Exhibit 4?

A No. She and I took care of it. February.

Q Of this year?

A Yes.

MR. LEVIE: No further questions, Your Honor.

JUDGE PAINTER: Anymore cross?

MR. HECHT: Yes, Your Honor.

RECROSS EXAMINATION

Q (By Mr. Hecht) At this time, since Mr. Levie opened up the question of the training program, I'd like to move once again for the admission of Defendant's Group Exhibit A which I will collate during lunch because he has raised it on his redirect and I feel it's relevant.

JUDGE PAINTER: Mr. Hecht, we have a whole folder of printed material there.

MR. HECHT: That's four copies.

JUDGE PAINTER: And I don't think that that is going to enlighten the Commission, and just remember those five Commissioners have to read every word we say here, and read every document.

I will state for the record that you are offering in evidence how many pages of printed material that --

MR. HECHT: Your Honor --

JUDGE PAINTER: Fifty pages of printed material regarding the training of employees in that office.

MR. HECHT: Well, it involves more than that. It also involves the Witness' notes with respect to the lectures she attended and what was covered, and this does represent four copies, and I know from the order of the Commission for expedited proceedings means that we dispense with certain procedures; but I still feel that this --

JUDGE PAINTER: Well, I am sympathetic, but I do believe, Mr. Hecht, if you had sent Ms. Shaffer to Harvard to get her PhD in this business that this case wouldn't turn on that point.

Therefore, the ruling stands. If you make proffered of this it will go forward with this transcript and the exhibits for possible review by the Commission. If you make proffered -- I'm rejecting it, but if you make proffer I will bundle this up and it will go along and the Commission may indeed put it in the record if it wants to.

MR. HECHT: I believe under the Administrative Procedures Act that that's the appropriate procedure.

I do have a couple of further questions for Ms. Shaffer.

Q (By Mr.Hecht) Would you state what your educational background is?

A I have a BA in psychology from the University of Massachusetts in Boston. I have a masters degree in scientific journalism from Boston University in Boston.

Q And --

A I have a University of Massachusetts teachers certificate.

Q And prior to becoming employed by British -- by Lloyd, Carr & Co. what was your occupation?

A I was an international educational consultant. I was directing a school in Costa Rica.

Q And what kind of school was that?

A It was a private school. I was hired to go down there and start it and run it and put it together. I was also teaching down there.

Q And how did you find out about Lloyd, Carr & Co.?

A I was at a party and a friend of mine had interviewed for a job, and said "Marilyn, you might enjoy this type of work." And in the past couple of months previous to that my friends had started to suggest that I should get into sales.

MR. HECHT: I have no further questions.

MR. LEVIE: I have no further questions, Your Honor.

JUDGE PAINTER: Thank you for coming in, Ms. Shaffer. There's not going to be any recall, as I see it, is there?

MR. HECHT: No.

MR. LEVIE: No, Your Honor.

JUDGE PAINTER: So, you're excused for the day, for the week.

(Witness excused.)

JUDGE PAINTER: Next witness?

MR. LEVIE: Mr. Shuster.

MR. HECHT: What time is it now, Your Honor?

JUDGE PAINTER: Would counsel prefer to recess for lunch at this time before the next witness comes on? I'll let you two decide?

MR. HECHT: Your Honor, we have a problem there. The General Counsel is supposed to get in a response with respect to the motion pending before the Second Circuit now, and I think that since this hearing is proceeding and I've been advised by Mr. Costikyan, who spoke to the clerk, that they were supposed to do this with haste.

I would like to ascertain the status of that before any lunch break, of the Court in the Second Circuit?

JUDGE PAINTER: Mr. Levie, I suppose you'd go along with him on that?

MR. LEVIE: Your Honor, to serve both purposes Mr. Costikyan -- Messrs. Costikyan or Crittenden could call the Second Circuit. Mr. Hecht could remain here. We could start with Mr. Shuster. I imagine a phone call would --

JUDGE PAINTER: Where is Mr. Shuster?

MR. HECHT: We don't have use of a private phone -- he's right here. We don't have the use of a private phone and I'll tell you something we're running out of coins.

JUDGE PAINTER: All right.

We'll begin with Mr. Shuster and try to finish direct on this.

You can accomplish that in 30 minutes, can't you Mr. Levie? Or less?

MR. LEVIE: Yes.

QWhereupon,

MICHAEL SHUSTER

was called as a witness and after having been duly sworn, was examined as follows:

DIRECT EXAMINATION

Q (By Mr. Levie) Would you state your full name for the record, Mr. Shuster?

A Michael David Shuster.

Q And where do you reside?

A Greenwich, Connecticut.

Q By whom are you employed?

A Lloyd, Carr.

Q And Company?

A Yes, I believe that's the legal designation.

Q You're with the Greenwich office, is that correct?

A Yes.

Q For how long have you been so employed?

A Since November.

Q Nineteen seventy six?

A Yes.

Q To the present, correct?

A Yes.

Q What are your duties? Or what is your title?

A I don't know what my title is. I've been called many things. I would say I'm a broker.

Q Have you been a broker since you commenced your employment with Lloyd, Carr & Company?

A Since the commencement? No.

Q Since --

A No, I went through a training program.

Q And did James Carr take part in that training program?

A Yes.

Q And what was the degree of his participation in that training program?

A Quite a bit.

Q Could you be a little more --

A He led the classes. He was one of many people who led the classes. He had authoritative knowledge on the markets.

Q Did he conduct classes on sales technique?

A I don't recall which classes he took place in, but I don't think the actual techniques themselves. However, we were schooled in that by Mr. Labus who is the other gentleman mentioned earlier.

Q Did this training take place in Boston or Greenwich?

A Greenwich.

Q For how long a period?

A Well, we have a continual learning process at Lloyd, Carr. On a week to week basis we have sales meetings in Greenwich. I don't know the procedure for the Boston office, but we have sales meetings every morning, and we have background material on various markets given to us every day. Sometimes four or five times a day.

Q Who is Charles LeMieux III?

A Charles LeMieux III -- is that -- I have no idea. I've heard the name.

Q You've never met a gentleman by the name of Charles LeMieux III?

A I've met a Charles LeMieux. You mean his -- is Charles LeMieux III the father or the son?

Q The son?

A I've met him, yes.

Q In what capacity have you met him?

A He addressed one of our sales meetings.

Q When?

A I don't remember the date.

Q In Greenwich?

A Yes.

Q What was the subject?

A I don't remember.

Q Did he speak a whole day?

A Did he speak a whole day? You mean did he talk for eight hours?

Q Did he conduct all the training on a given day?

A I did not say he was a member of the training. I said --

JUDGE PAINTER: Respond to the question, Mr. Shuster.

THE WITNESS: He's asking the wrong question.

MR. HECHT: Okay. Let me handle it. I --

JUDGE PAINTER: Mr. Levie will rephrase his question and we'll get the answer.

THE WITNESS: He asked if he conducted the training --

JUDGE PAINTER: Let Mr. Levie rephrase his question.

Q (By Mr. Levie) Did Charles LeMieux III conduct part of the training at the Greenwich office of Lloyd, Carr?

A No.

Q Did Charles LeMieux III take part in any training program of Lloyd, Carr & Co.?

A No. Charles -- the son take part in any training of the whole company? I have no idea. Not in Greenwich.

Q Were you ever present at any location where Charles LeMieux III, who is the son, spoke to one or more employees of Lloyd, Carr & Company?

A Yes, I said that.

Q How many occasions did he so speak?

A I don't recall, one or two.

Q Do you recall the subjects?

A No, I said that before.

Q Did you ever see Charles LeMieux III on the premises of Lloyd, Carr's offices in Greenwich or Boston?

A Yes, in Greenwich.

Q Do you know what he was doing there?

A No.

Q How many occasions did you see him there?

A I don't recall.

Q During what time period did you see him there?

A I believe it was before normal business hours. Before nine o'clock in the morning.

Q With respect to the time, in terms of months, what time period are you talking about that you saw --

A What months?

Q Yes.

A I really can't recall. I don't remember.

Q Nineteen seventy six? Nineteen seventy seven?

A I would say it was very close to the beginning of my employment with Lloyd, Carr.

Q Which would be '76?

A Yes, I think so.

Q Did you ever see Charles LeMieux III at Lloyd, Carr's offices in Boston?

A No.

Q Did you ever have occasion to see or speak with Charles LeMieux III at any location regarding the business of Lloyd, Carr & Company?

A I've never said a word to him nor has he said any word to me.

Q Have you ever been present when he spoke to others in your presence regarding the business of Lloyd, Carr & Company?

A No, he responded -- he talked to a few people. I think it was a group. I was not included in the group. Of about three or four people regarding his own history. That's all.

It had nothing to do with commodities whatsoever. Just his background that he went to Harvard and so on. It was just a personal type of exchange.

Q Have you ever had any correspondence with Charles LeMieux III regarding the business of Lloyd, Carr & Company?

A No.

Q From January 17 -- are you presently registered as an associated person with the Commodity Futures Trading Commission?

A I would assume that to be correct. I spoke to a Mrs. Burns at the office of -- in the Chicago office of the Commodity Futures Trading Commission and she responded to me that -- what I would have to do is -- I asked her if I should send a personal check, and she responded it was something like a driver's license, and that I should send a check in.

I sent a check. I had someone call from Chicago to make sure they received it.

Q When did you send this check?

A When did I send it? The exact date I don't recall, but it was sent special delivery. I'm not sure it was sent return registered receipt. I would have to ask the secretary.

Q It was sometime toward the end of February 1977, correct?

A Near the end of February? I don't think so. I think it was sent -- when was the exact -- the same copy of the document you gave Marilyn before about the check not being honored by the bank?

MS. SHAFFER: Dated --

JUDGE PAINTER: One person at a time.

THE WITNESS: I don't recall the date. Otherwise I would tell you.

Q (By Mr. Levie) When did you file -- when did you execute and fill out your application for registration as an associated person?

A What do you mean by execute?

Q When did you fill it out? When did you put down the information on the form?

A I really don't know the exact date, but it was well before the letter that your Commission sent me.

Q Was it before or after January 17, '77?

A I'm sure it was before.

Q Why are you so sure?

A Because I remember -- oh, what are you -- I just don't understand the question.

JUDGE PAINTER: When did you fill out this application and send it to the Commission?

THE WITNESS: I don't remember. I would say it was before the letter I got from the -- I would say a week to two weeks before the letter I got saying Lloyd, Carr's check was not honored by the bank: so, you can take that from the letter. I hope that answers --

JUDGE PAINTER: Thank you.

MR. HECHT: Your Honor, I think it's a good practice that these things be marked by the Court Reporter for identification. It's the only way we're going to keep track of things. I just don't think it's a good practice to hand documents and to discuss them before they're identified by the Court Reporter.

JUDGE PAINTER: I appreciate that comment, Mr. Hecht, and Mr. Levie at the time he makes an offer for these exhibits to go into the record will bring them back to the Reporter's table and he will identify each one that he offers in evidence.

THE WITNESS: I never received this letter, this one here.

JUDGE PAINTER: Mr. Levie?

Q (By Mr. Levie) Mr. Shuster, I direct your attention to the document which has been marked by the Reporter as

Division Exhibit 5 for identification.

A Yes.

Q Did you receive the original of that document?

A I received something that looks like this, but not this letter.

(The document above-referred to was marked Division Exhibit No. 5 for identifiation.)

Q (By Mr. Levie) What type of letter -- how did the letter you received differ from Division Exhibit 5?

A It said that the bank or the commodity futures -- I'm not sure if it's the bank or the Commodity Futures Trading Commission did not honor Lloyd, Carr's check and would I remit another check.

Q And was the date the same on the letter you received as the date on Exhibit 5?

A I don't know. I would assume -- I can't assume anything. Not in a proceeding like this. I don't have the letter. If you produce it --

Q You received -- did you receive the letter from the Commission regarding a check that bounced in February of 1977?

A Yes, I believe I did.

Q So, you knew --

A I don't think it was the end of February. I don-t recall the date though. I think it was --

Q When you filled out your application for registration as an associated person what did you do with that application?

A What did I do with it? I handed it to the secretary who presumably sent it off.

Q When you received notification that your application -- that the check which apparently accompanied your application had bounced --

MR. HECHT: I'd like to object to the form of the question, because (a) I think it's an improper question and (b) I don't think it's the facts. And you know what I'm talking about.

JUDGE PAINTER: We have testimony a check "bounced". Mr. Hecht, I'll overrule your objection.

MR. HECHT: But, Your Honor, you're asking a layman a legal term and I think --

JUDGE PAINTER: Is "bounced" a legal term, Mr. Hecht?

MR. HECHT: I think it is under this circumstance because it's not such an open and shut transaction, and Mr. Levie knows what I mean.

JUDGE PAINTER: I don't believe Mr. Shuster is quite that unsophisticated and he has a good layman's knowledge of what a bounced check means.

Proceed, Mr. Levie.

THE WITNESS: Well, I don't think it's bounced.

JUDGE-PAINTER: Well, clarify this during the questioning.

MR. HECHT: I'll do that. I'll clarify it.

Q (By Mr. Levie) Mr. Shuster, you received a letter similar in content to Division Exhibit 5, correct?

A Close to the content.

Q And that letter in substance told that the check which accompanied your application had not been accepted or credited for payment with the Commission, correct?

A It didn't say that. It said it refused to honor Lloyd, Carr's check.

Q And did you understand that to mean that the $20 for your application, the application fee, had not been accepted and processed by the Commission?

A Yes, that's what I assumed it was.

Q So, you knew some time in February that your AP application had not been accepted by the Commission, correct?

A I didn't know that. I knew that the check was not accepted and I spoke to Mrs. Burns of your office who said "send another one." So, I sent -- within five minutes of the receipt of that letter I sent another check in my own name which I was reimbursed for.

Q Prior to the time you sent in that new check -- let me rephrase that. Between January 17, 1977 and the time you sent in the new check you continued to solicit orders on behalf of Lloyd, Carr & Company, correct?

A Prior to the receipt of the letter?

Q No, Mr. Shuster. Prior -- between January 17, 1977 and the time you sent in your own personal check --

A Right.

Q To pay for your AP application you continued to solicit customer orders for commodity option transactions on behalf Lloyd, Carr & Company?

MR. HECHT: I'm going to object at this time. I think that there should be a discussion between Mr. Levie, Mr. Stewart if he wants to participate, myself and Mr. Costikyan with respect to this line of questioning and the Court and its Clerk, and if you then want to put it on the record after we've discussed it --

JUDGE PAINTER: I think the question is entirely appropriate. The fact remains we do know that this gentleman sent in a check and that he's now going to tell Mr. Levie whether or not he engaged in his usual business from January 17 until after he sent in his check.

I think I'm entitled to know that, or rather the Commission is entitled to know that.

MR. HECHT: But Your Honor I think we're getting into an area -- but if that's the way the Commission wants to go, fine, but I think there were unusual circumstances here which the Court --

JUDGE PAINTER: Now, you're going to tell me about that --

MR. HECHT: I think it should be done off the record. If you want to do it on the record I will, and I'll state my reasons on the record, but I think it should be made clear --

JUDGE PAINTER: It will be on the record, but the Witness will respond to the question.

THE WITNESS: Can I confer with counsel before I answer that question?

MR. HECHT: Yes.

JUDGE PAINTER: Yes.

MR. HECHT: I'll put it on the record.

Mr. Shuster has been subject apparently, he has advised me, to certain threats by both Mr. Levie and Mr. Stewart with respect to selling after January 17, and has been threatened in certain respects, and I think that they have told him and intimated to him certain possible criminal sanctions.

And I think the Court should be aware that for them to turn around and ask this kind of question under those circumstances I think is highly improper because they threatened him.

As a matter of fact, after he had written them and said "please contact company counsel. Please stop harassing me." And they still persisted in calling him.

JUDGE PAINTER: Well, the word threat may be true or not true, Mr. Hecht. I think to apprise persons in this business of the law is not a threat, or the possible consequences of violating a law.

I will hear the Witness' response to this question. You may ask him one more time and let's get the response, Mr. Levie?

THE WITNESS: May I confer with counsel?

JUDGE PAINTER: You may.

Off the record.

(Discussion off the reocrd.)

JUDGE PAINTER: On the record.

MR. HECHT: One thing I would appreciate, if the Division of Enforcement would furnish me with extra copies of their exhibits. They're handing one to the Court. I've only got an extra copy of one exhibit out of five.

This -- I think it would save a lot of time for cross examination if I have to reach over and use the Court's copy.

JUDGE PAINTER: Well, I'm trying to be as helpful as I can here, Mr. Hecht. Since you're sitting adjacent to me it won't be too much of a burden for you to just reach over and --

MR. HECHT: I think I should have one for my record, too, Your Honor.

JUDGE PAINTER: I think that's true, and Mr. Levie will get these photocopied during the lunch break and will get these to you.

MR. HECHT: Now, let me -- paperwork procedure --

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

Mr. Levie, you have a question put to Mr. Shuster and he's now going to respond.

THE WITNESS: Yes, could you repeat the question?

Q (By Mr. Levie) From January 17, 1977 until the time in February 1977 when you mailed in your own check to pay for your AP application to the Commission were you engaged on behalf of Lloyd, Carr & Company in the solicitation of commodity option -- of orders for commodity option purchases from members of the public?

A Yes.

Q Between January 17, 1977 and the present, approximately how many members of the public have you spoken with in an attempt to solicit orders for the purchase of commodity options?

A How many members of the public? I can't answer that because I don't keep records on it.

Q Would it be fair to say more than a thousand?

A It would be fair to say it was more than one and less than one hundred thousand.

Q Mr. Shuster --

JUDGE PAINTER: Mr. Shuster, let's not get flippant. I want you to give Mr. Levie a proper response. Now, you know there's a lot of difference between one and one hundred thousand. Now, do the best you can in responding.

THE WITNESS: I would say approximately between 50 and 100 per day.

Q (By Mr. Levie) For that time period? From January 17, '77 to the present?

A Yes.

Q From January 17, '77 to the present how many of your customers have purchased commodity options?

A How many of my customers? I can't respond, I have no idea of the exact totals. I think I can provide that to the Court if they wish. You know, the exact details, like how many.

Q Approximately how many options have you sold between January 17, '77 and the present?

A Between that time maybe 15 to 20.

Q And what is the --

A   That's a guess. That's just a guess.

Q   And what's the approximate dollar amount that the customers paid to Lloyd,Carr & Company for those options?

A   I really can't give an approximation, Mr. Levie. I'd be happy to provide the Court with exact details of how many options and the exact amount, and I can probably produce that by tomorrow morning, if you like.

JUDGE PAINTER: I think that suffices, Mr. Levie. Move on.

Q   (By Mr. Levie) Mr. Shuster, between January 17, 1977 and the present have there been other persons at Lloyd, Carr's Greenwich office who have been involved in the same activities of solicitation of orders as you?

A   Yes.

Q   And to your knowledge have they been working at approximately the same level of activity as yourself?

A   No.

Q   When one of your customers sends in money to purchase a commodity option are you notified of this fact?

A   When they send in money?

Q   To the company, yes?

A   It depends upon the way they send the money in. For example, if they wire the money in we are asked to ask the question of customers how the money is going to come in, whether it's a personal check or wire or whatever.

Q Do you -- with respect to your receipt of commissions for the options you sell, are you paid commissions after the customers form of payment has been cleared through Lloyd, Carr's account?

A I would assume so, yes.

Q Approximately how much have you received in commissions from the sale of commodity options from January 17, '77 to the present?

A I can provide that with the other information, if you like.

JUDGE PAINTER: Can you give him any approximation or whatever at this time?

THE WITNESS: Ten thousand.

JUDGE PAINTER: Thank you.

THE WITNESS: That's a guess, though.

Q (By Mr. Levie) Have you ever engaged in conversations with a customer, rather, to sell a commodity option when James Carr was present at that conversation?

A The whole conversation?

Q For any part of that conversation?

A For part of one conversation he spoke to me on the telephone, but James Carr was not present, nor did he hear -- nor did he know the customer or meet with him.

Q Did he --

A In other words, I spoke to him on the telephone to ask him a question about something, about a specific purchase which was consummated.

Q Have you ever come into Boston to meet with James Carr and a customer of Lloyd, Carr & Company?

A Not together, but separately. Oh, yes. I have. I've met with a customer. I've brought a customer into the office. James Carr was there. What happened was that a customer went into his office and then he walked around the office, just showed him the office.

Q So, is it your testimony this customer was in the office with James Carr for some period of time when you were not present?

A I was present, but I was not -- you know, in other words, what exactly happened was, and it all happened up to the last few questions, have all been interconnected. And let me just connect them up for you. In a specific instance when I was discussing business with a customer in this area I asked a question to Jim Carr on the phone. He was not present in that conversation.

I then came with the customers, two of them, into the offices and I eventually introduced them to Jim Carr. No discussion was taking -- the deal had been consummated before they had come in, and they just introduced themselves, that's all.

Q Is it your testimony that no business was discussed between James Carr and these customers, to your knowledge?

A I don't know what was discussed. I believe they discussed their own specific transactions, briefly. Briefly what he thought of them.

Q When did this --

A But I was not present at that conversation. So, I can't tell you what was said.

Q When did this meeting take place?

A Last Monday.

Q And had the individual involved purchased an option prior to the time he went into meet with Mr. Carr?

A Yes, not the same option, though. Another option.

Q Did the person who came here and met with Mr. Carr on the 28th purchase an additional option after meeting with James Carr?

A No.

Q Did he purchase one or more options immediately prior to meeting with James Carr?

A He purchased one before meeting with James Carr.

Q When was that?

A I don't recall. I can produce that also for the Court, the exact date. I really don't recall. It was a long time ago.

Q How many options has this individual purchased?

A TWo and his partner one.

Q I assume we're both talking about Edward Talbot, correct?

A Yes.

Q Okay, when did Mr. Talbot purchase his options?

A I will say this -- when did he purchase them?

Q When?

A Two on Monday. Two this past Monday which was the 28th. Before that I can't give you the exact date before that. It was some time ago.

Q In the month of February?

A I don't remember. I can produce that for you if you like. Would you like me too?

JUDGE PAINTER: I don't know how interested Mr. Levie is.

Go ahead, Mr. Levie.

MR. LEVIE: That isn't necessary, Your Honor.

I have no further questions at this time, Your Honor.

JUDGE PAINTER: Would you like to get your cross in before the lunch break?

MR. HECHT: Your Honor, my cross will probably be about a half hour to forty five minutes. It will be extensive because he opened up certain areas.

JUDGE PAINTER: We'll be back at 1:30 then, Mr. Shuster.

MR. HECHT: Your Honor, can I ask. It's already 12:30

and most of the time is going to be on the phone finding out what General Counsel is doing and what they filed.

I'd appreciate it if we came back at a quarter to two. Just give us another 15 minutes. I'm not going to eat lunch anyway.

JUDGE PAINTER: Out of sympathy for your plight, Mr. Hecht, we'll go to 1:45, and Mr. Levie I'm sure you have no objections to that, do you?

MR. LEVIE: No, sir.

JUDGE PAINTER: Of course me might go to six tonight.

MR..HECHT: Your Honor, there's two things I want to make clear. I reaffirm my position that in view of the present status of the matter before the Second Circuit that I think it's improper to hold this hearing, and the Division's refusal to even adjourn it for an hour I think it totally unreasonable.

JUDGE PAINTER: I don't think the Division is refusing to adjourn it, Mr. Hecht.

MR. HECHT: Okay.

And the second point is, I a -- I understand before, and I just want to clarify, you denied our omotion to dismiss?

JUDGE PAINTER: Oh, yes. That motion has been denied. I assume you've made it. It's been denied. You indicated you were going to. So, I denied that motion.

MR. HECHT: Thank you, Your Honor.

JUDGE PAINTER: And we will reconvene then at 1:45, and I understand that you three will confer at some time during the lunch hour for possible additional stipulations or anything like that?

MR. HECHT: I don't know if I'll have time. I have got to solve this fire first, if I can. We're now going through the records, and I want to bring over what's been xeroxed and reproduced.

As far as the accounting ledgers go, we're sending them out, and I should let the Court know, to a special place because they are large sheets, and they can't be done at the company's xerox machine.

JUDGE PAINTER: And at your request I'll have Mr. Levie photocopy the proposed exhibits so that you have a copy in hand.

Off the record.

(Whereupon, at 12:30 p.m. the hearing was adjourned to meet again at 1:45 p.m. the same day at the same place.)

AFTERNOON SESSION

1:45 p.m.

JUDGE PAINTER: On the record.

We're ready for the cross of Mr. Shuster.

CROSS EXAMINATION

Q (By Mr. Hecht) Mr. Shuster, during lunch time, did you speak with any of the counsel herein?

A No, I went to have lunch, to that shopping mall.

MR. HECHT: May we go off the record for a moment, please?

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

MR. LEVIE: Your Honor, I'm tendering to Mr. Hecht Xerox copies of Division Exhibits 1 through 5, which have been marked for identification.

JUDGE PAINTER: Thank you.

MR. HECHT: Your Honor, at this time, we're going through the Exhibits here. I noticed they're only marked for identification. And you mentioned something before, that at the close of the hearing, he would move en masse for admission of his records. And I think it would be to everyone's convenience if, one by one I could state my grounds for objection, and you rule on them at the time.

JUDGE PAINTER: When Mr. Levie makes his motion to have these documents entered into the record, you may at that time make your objection on each and every document that you care to object to.

Q (By Mr. Hecht) Mr. Shuster, do you recall testifying as to the training program at your office?

A Yes.

Q Do you recall how long a period this training program was for?

A Yes, I said it was continual.

Q But was there an initial training period?

A Yes.

Q Before you could sell?

A Yes.

Q About how long was that?

A One week in the classroom, and at least one week on the phone.

Q And the week in that classroom, were you permitted to make any calls?

A No.

Q And were you given materials by the company? Written materials?

A Written materials? No.

Q What was the nature -- a brief description of the nature -- of the training?

A It's very similar to what Marilynn said. We were given a background of the markets, the various markets. And also trading techniques. That's what it encompassed.

Q Have you ever received any customer complaints?

A None.

Q And do you recall that Mr. Levie was referring to a customer of yours? I believe a Mr. Bertram?

A No. Mr. Talbot, who's sitting right there.

Q And do you believe that your relationship with Mr. Talbot has been a good relationship?

A Yes, I think so.

Q Have you received a complaint from any customers with respect to any transaction?

A No.

Let me just add that all my customers, everyone of the people that I've sold anything to, are making money.

Q To your knowledge, has everyone in the Greenwich office filed for an associated persons application?

A To my knowledge, everyone's filed.

Q And to your knowledge, has anyone been accepted?

A Not that I know of. I thought I was, as I testified before.

Q Do you know any people who are employed by any other commodity option dealers?

A Yes.

Q Do you know if they had any problems, or have they gotten their AP status?

MR. LEVIE: Objection.

THE WITNESS: None whatsoever.

JUDGE PAINTER: What's the basis for your objection?

MR. LEVIE: Irrelevancy.

JUDGE PAINTER: I think Mr. Hecht is trying to show that perhaps Lloyd Carr & Company has been singled out. And for some reason, everyone else gets their applications approved, and Lloyd Carr doesn't get any approved. I think Mr. Hecht is entitled to get what he can on the record to substantiate that theory.

MR. HECHT: Your Honor, it's also alleged as an affirmative defense in our answer.

JUDGE PAINTER: Answer the question if you can.

THE WITNESS: I did. People at other houses have all been registered, the ones that I know anyway.

Q (By Mr. Hecht) Do you know if those other houses have participated in the regulations litigation?

A I dont follow you.

Q What were the other houses?

A There are a lot of them. I talked to people at Conti, I talked to people at Mocatta; I talked to people at-- I don't think ICO is registered. I've talked to people at ICO. I've talked to some of the wire houses. I've talked to Dean Witter. I've talked to Shearson, Hayden, Stone.

In fact, because I'm doing well, some of them have been entertaining me for employment. I will not go.

Q Why won't you go?

A Because I like working for Lloyd Carr, and I enjoy it. And I make a lot of money there.

JUDGE PAINTER: I think that point is established, if you can move along, Mr. Hecht.

Q (By Mr. Hecht) Would the other houses offer you similar compensation?

A Better.

Q Now, do--

A Let me just say one thing. I will say that I like the fact that Lloyd Carr has, by taking the CFTC to court on double segregation--

JUDGE PAINTER: You can forego the statements, Mr. Shuster. If you've got some questions, Mr. Hecht, put them to him and let's move along.

Q (By Mr. Hecht) Why do you like Lloyd Carr?

A The--

Q And have not left?

A The reason I like them is because I think they've given-- they're taking all the illegitimacy out of this business. They are-- there is-- they're honest, they're trustworthy. They tell it like it is. And further more, they are-- I like the fact that they are the mavericks in the industry, that they are trying to make every house come up to our standards -- with the double segregation rule, with the training programs and with all the other things that have been discussed earlier.

Q Do you recall receiving a telephone call from a Richard Levie?

A Yes, sir.

Q Do you recall when that call was?

A Well, I--

MR. LEVIE: Objection, Your Honor. I don't see the relevancy or materiality to the charges in this case.

MR. HECHT: As I brought up before when you got into the question on direct examination, I think it's directly relevant to this case to know what the staff has directly said to employees of the company who are represented by counsel. Even after, we've got a letter here dated March 2, 77 to you, directing all inquiries directed at him by the staff to the counsel for the company. And that even as late as 10:00 yesterday morning, Mr. Stewart was on the phone with him. I think that's the problem.

JUDGE PAINTER: Mr. Hecht, I will let you get a few questions into the record to establish this fact. But I want you to understand that this is not a proceeding in which you are trying the Commission. You are questioning, perhaps, some of the practices and procedures. But this will not be converted from a hearing on the fitness for registration and the other issues I've outlined, into a trail of the Commission itself.

Now, I'm going to give you two or three questions on this matter and then I want you to leave that.

MR. HECHT: Your Honor, I would like to point out for the record that, in the answer timely filed by the Respondents, there is a specific affirmative defense relating to the staff's conduct.

JUDGE PAINTER: Ask your questions.

MR. HECHT: I want to put on the record that I think I'm entitled to ask the questions. They're not leading questions. I'm entitled to admit the evidence. They made no motion to dismiss this. Expedited procedures, you know my feelings on that.

However, I think that the Respondents should be offerred a fair opportunity to introduce evidence.

JUDGE PAINTER: The issue is whether Lloyd Carr and Company is fit to be registered, plus the other issues. And I simply don't want to get into a trail of the Commission itself.

Now, you know the grounds that were alleged in the complaint. And you know why we're here. Bear that in mind, pursue your line of questioning. But we won't tolerate this for the whole afternoon, I can assure you.

MR. HECHT: Your Honor, these are expedited proceedings that were requested by the Division. If they felt that a defense was not proper, I think the appropriate procedure was to make the appropriate motion. And it should be pointed out in this connection, I did file a motion with the Administrative Law Judge requesting permission to file a motion directed to the pleadings, which I have not yet even heard.

But I think since it--

JUDGE PAINTER: Okay, to your questions, Mr. Hecht.

Q (By Mr. Hecht) Do you recall what the question is, or shall I ask the Court Reporter?

JUDGE PAINTER: I'll restate your question if you can't remember it, Mr. Hecht. I don't want to bother even the Reporter with this.

You asked Mr. Shuster about a telephone call from Mr. Levie.

THE WITNESS: Right, yes.

Q (By Mr. Hecht) Did you call Mr. Levie, or did he call you?

A I'll tell you exactly what happened. I received a telegram the 24th, a verbal telegram. It said-- it was written on a legal sheet. It said, To Mike. And there are two Mikes in our office. So I thought it was for him because I never heard of Richard Levie.

I dismissed it, as I never heard of him. The following day the telegram came. It said, the subpoena-- I don't know it word for word, but this is what the telegram said. The subpoena is still in effect. The hearing is postponed. Well, I hadn't received a subpoena. So I didn't know what he was talking about.

So I called up. I spoke to a Mr. Koblenz from the Commission. And Mr. Koblenz said that Mr. Levie was not there. About 15 minutes later I got a call from Mr. Levie, from the Commodity Futures Trading Commission.

I said, Mr. Levie, what's this all about? I don't understand it. I have not received a subpoena. He was very abrupt with me. He was very intimidating to me.

Q For the record, what did he say to you, and what did you say to him?

A I said to him, Am I doing anything illegal? And, What is this all about?

He said, Does Macy's tell Gimbels? So I still had no answer. I really had no idea what it was all about. That's about it.

JUDGE PAINTER: Was that the end of the conversation?

THE WITNESS: No, the conversation continued. He told me the type of questions he would ask me. I said, Am I a witness for the defense or the prosecution? And if so, why am I singled out? He wouldn't answer any of these questions.

He was very demeaning to me. And he--

JUDGE PAINTER: State how he was demeaning.

THE WITNESS: He was using abrupt and abusive language to me.

JUDGE PAINTER: What is abusive?

THE WITNESS: He was-- suggested that I get counsel. He told me-- when I asked him if I was doing anything illegal, he did not say. He said, You'd better get counsel. So did Stewart.

JUDGE PAINTER: And you took that as a threat?

THE WITNESS: Well, there are other things that I don't think should be said in a--

JUDGE PAINTER: All right, Mr. Hecht. Proceed.

Q (By Mr. Hecht) Do you recall what those other things were--

A To be exact, I don't remember what the things were. Because the call was February 25.

Q What's your recollection of the substance?

A The substance was -- you know -- he was-- I told him at the very end of our conversation-- I dont know what was said. I told him at the very end of our conversation-- he said he had the names of some of my clients. I said, What right do you have to have the names of some of my clients? And call them. I mean, 'cause none of my clients had ever -- you know -- asked me that. And -- you know -- I kept asking him, Am I doing anything illegal? What's going on here? And he implied by his conversation, although I don't remember it word for word, that I should not-- that there was possible criminal action to be taken against me.

And that's the reason that I asked to confer with counsel before.

JUDGE PAINTER: Mr. Shuster, I don't like to interrupt Mr. Hecht. But you indicated Mr. Levie told you to seek counsel.

Now, did you seek counsel because Mr. Levie told you to? Or did you get frightened over the word criminal?

THE WTINESS: I was frightened. And I told Mr. Levie that I don't want him calling up anybody I do business with. That I don't want him bothering me or harrassing me in anyway. And that if my company did not -- which is stated in the letter, also -- if my company did not sue him or enjoin him from what I consider to be a violation--

JUDGE PAINTER: Now, Mr. Hecht, I'm about ready to cut you off.

Q (By Mr. Hecht) Did you subsequently write Mr. Levie a letter?

A Yes.

MR. HECHT: Let the record reflect that I am handing to the witness a copy of a one page letter, dated March 2, 1977.

MR. LEVIE: I think it would be proper to have it marked for purposes of the record, at least so it has a number.

JUDGE PAINTER: Would you mark it for identification purposes?

MR. HECHT: Your Honor, I respectfully request the Court Reporter-- that you ask the Court Reporter to mark it.

JUDGE PAINTER: If you will take it back to the Reporter he will so mark it.

MR. HECHT: Your Honor, I believe this should be remarked, because we already have Respondents' Exhibit 1 noted for the record. This should be Respondent's Exhibit No. 2.

JUDGE PAINTER: Would you mark this Respondents' Exhibit 2?

(Respondents' Exhibit No. 2
was marked for identification.)

JUDGE PAINTER: Respondents' Exhibit 1 is the one that has been rejected.

MR. HECHT: Right. But it has been proferred and we will collate it as a group exhibit.

Q (By Mr. Hecht) Can you identify that letter?

A Yes.

Q Is that a copy of the letter that you wrote to Mr. Levie?

A Yes.

Q And did you mail the letter?

A Sure.

Q And have you ever heard from Mr. Levie since?

A No.

Q Did you subsequently receive a phone call from Michael Stewart?

A Yes.

Q Where were you at the time?

A In my Greenwich offices.

Q When was that call?

A It was yesterday, I believe.

Q Do you recall about what time it was?

A Yes, I do. It was in the morning, about 10:00.

Q Do you recall what you said to Mr. Stewart, and what he said to you?

A Mr. Stewart-- I asked him the same questions that I asked Mr. Levie in the previous conversation. I asked him, one, Am I doing anything illegal? And he said that-- first he said that he was not my counsel and he couldn't advise.

Second, he said that-- well, you'd just better get an attorney to represent you. Secondly, I asked him, Are you threatening me? And he just kept repeating himself over and over. He eventually hung up on me.

Q What do you mean by repeating himself over and over? What was he repeating?

A You'd better get counsel, you'd better get counsel, you'd better get counsel. He must have said it six times.

Q Did Mr. Stewart ever advise you that he had contacted me to request permission to call you?

A No.

JUDGE PAINTER: Mr. Hecht, that raises a question. When did you become counsel of record for Mr. Shuster?

MR. HECHT: No, the letter says for Lloyd Carr. I became counsel of record beginning in the latter part of October, 1976.

JUDGE PAINTER: For my edification, did you advise Mr. Shuster on the filing of this March 2, letter, marked as R-2?

MR. HECHT: No.

THE WITNESS: That was entirely of my own.

MR. HECHT: I have no further questions.

JUDGE PAINTER: Any more on redirect?

MR. LEVIE: Yes, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Levie) Mr. Shuster, who did you speak to at Conti Commodities regarding their AP application?

A I don't remember the name.

Q When did you speak to him?

A I spoke to-- when? About two, three weeks ago.

Q And you don't remember the person's name?

A I have his brochure in my desk that he has subsequently sent me. And I'm sure it has his name on it, and I can produce that.

Q Did the person also sell futures contracts?

A I didn't ask him.

Q Did you ask him when he became registered as an AP?

A No.

Q Did you ask him when he applied for registration as an AP?

A No.

Q Who did you speak to at Mocatta?

A I also have the brochure. I don't remember. I just called up. And when you call up a commodity house like Mocatta or Conti, they switch-- the switchboard gives you one of the salesmen., And, you know,it could be anybody.

Q So you don't know the name of the person?

A No, but subsequently they have sent me brochures. Neuburger did the same thing: I remember that guy's name.

Q Did you ask the person you spoke with at Mocatta--

A No, I didn't ask him anything.

JUDGE PAINTER: Wait till counsel has finished his question.

Q (By Mr. Levie) Did you ask the individual at Mocatta with whom you spoke when he or she applied for registration--

A No.

Q Did you ask that individual at Mocatta when he or she had been approved for registration as an AP?

A No.

Q Did you determine whether or not the person at Mocatta was selling futures as well as option contracts?

A No, I just compared notes with them about prices.

Q With whom did you speak at ICO, International Commodity Options?

A Nick Jones.

Q When did you speak to Mr. Jones?

A I'm not sure of the exact date. About a week and a half ago.

Q And where is Mr. Jones located?

A 80 Pine Street.

Q In what city?

A New York City.

Q Did Mr. Jones tell you he is a registered AP?

A Well, when he handed me his business card -- which I think I can provide today -- it says on the business card, registered with the CFTC.

MR. LEVIE: May I ask the Court's indulgence to see that?

THE WITNESS: I think I have it. Shall I produce it?

JUDGE PAINTER: If you have it.

THE WITNESS: I may. I cleaned out my wallet the other day.

No. You can ask Nick Jones, though. He knows me.

Oh, Mr. Levie, there's someone else there. To double the answer, there's another fellow there -- George Kimmel.

Q (By Mr. Levie) George--

A Kimmel.

Q Going back to Mr. Jones, did his card say he was registered? Or did it say his firm was registered with the Commission?

A Instead of speculation, I can produce the card for you tomorrow.

MR. LEVIE: I would ask that it be produced, Your Honor.

JUDGE PAINTER: Do you know, Mr. Shuster -- that's the question he's asking, and you can produce the card tomorrow. Do you know?

THE WITNESS: What?

JUDGE PAINTER: Whether the card said the individual was registered or the firm was registered?

THE WITNESS: It didn't say either. It just said across the bottom, registered with the CFTC. And I don't think-- well, I'm not sure.

Q (By Mr. Levie) Did you ever ask Mr. Jones, orally, whether he was registered with the Commission as an AP?

A I expla-- no. But what I did ask Mr. Jones, was that, you know, are you-- is all this legal stuff taken care of? And he said, Yeah.

Q With respect to Mr. Kimmel, also at ICO, when did you speak with him?

A About the same time.

Q About a week and a half ago, it should be?

A Yes.

Q Did Mr. Kimmel tell you he was registered as an AP?

A No, I didn't discuss that with him.

Q Who did you speak to at Dean Witter?

A I spoke to Ron Johnson.

Q And where is Mr. Johnson located? What city?

A He's in the municipal bond department.

Q In what city?

A New York City.

Q Now, did Mr. Johnson tell you he was registered as an AP?

A No, he's not registered as anything. He's in their training program. He is in the municipal bond department. He's in training. And he's at the headquarters of the syndicate department. It's right there. So he has a pretty good knowledge of what's happening.

Q With whom did you speak at Shearson, Hayden, Stone?

MR. HECHT: Objection to the form of the question. I don't believe he mentioned Shearson, Hayden, Stone.

JUDGE PAINTER: Did you mention Shearson, Hayden, Stone?

THE WITNESS: I don't recall. I spoke to-- once again, I spoke to just the broker in the office in Greenwich. I don't know the name, nor have I received any literature from him, nor do I want to.

Q (By Mr. Levie) Did you ever ask that broker whether he was registered with the Commission as an AP?

A No. I remember Neuburger. The guy's name is I think O'Flaherrety. I think it's O'Flaherrety, from Neuburger Securities.

Q And did Mr. O'Flaherrety tell you he was registered as an AP?

A He-- that was not the topic of conversation.

JUDGE PAINTER: Mr. Shuster, let me interrupt.

You testified that you had spoken to a number of individuals with these different firms, about their registration with the Commodity Futures Trading Commission. Did you or did you not do so?

THE WITNESS: I spoke to only-- I didn't understand the question. What I'm saying is this. I did talk to a few people about the legal problems of Lloyd Carr vis-a-vis their own firm. And all of those people, the names that I just gave you, I would say some I talked about registration with. Some I talked just about the markets with.

JUDGE PAINTER: I deem it that the witness has not discussed with persons outside his own agency the very problem of registration with the CFTC.

Now, if you can name names, Mr. Shuster, and times and places, please do so. Otherwise, I assume you haven't talked to these people about registration.

MR. HECHT: Let me say something, Your Honor.

JUDGE PAINTER: Yes, Mr. Hecht?

MR. HECHT: I think his prior testimony was mischaracterized because--

JUDGE PAINTER: It was clearly misunderstood by me, Mr. Hecht. Because I understood from this witness that he said that other people did not have the problems that he had been having.

MR. HECHT: That's a lot different than whether or not he discussed an AP status of an individual.

JUDGE PAINTER: As an AP. That was my understanding.

THE WITNESS: As an AP. Okay, I'm with you now.

The only person I discussed, not AP but firm registration with, were the people from ICO and that's about it.

Q (By Mr. Levie) And that would be Mr. Jones and Mr. Kimmel?

A Yep.

Q I believe you testimony was that you thought you were accepted as an associated person, correct?

A Yeah.

Q As of what date did you think you were accepted-- registered as an AP?

A The day I called Mrs. Behrens.

Q When was that? Sometime in February, Correct?

A I think--

MR. HECHT: I'd like to object to the form of the question. He's leading his own witness.

MR. LEVIE: Obviously, he's a hostile--

JUDGE PAINTER: Overruled.

Q (By Mr. Levie) I believe the question was, your telephone call to Mrs. Behrens took place sometime in February. Correct?

A It took place the day I received the letter from the CFTC regarding the-- the check that was not honored, which was one of your exhibits. Which-- well, it was the letter that was similar to one of the exhibit letters.

Q And you have the original letter?

A The handwrit-- yeah, I may have it in Greenwich.

MR. LEVIE: I request that that be produced, Your Honor.

JUDGE PAINTER: Could you bring that in, Mr. Shuster?

THE WITNESS: Sure, no problem.

JUDGE PAINTER: Thank you.

Q (By Mr. Levie) Then between January 17, '77 and the time you spoke with Mrs. Behrens, you knew that you were not registered as an AP. Right?

A No. I just thought it was just a matter of the check.

Q Who told you it was just a matter of the check?

A Mrs. Behrens.

Q But the question is, between January 17, '77 and the time you spoke to Mrs. Behrens, you knew you were not registered as an AP. Correct?

A I assumed it was like a drivers' license.

MR. HECHT: I object, Your Honor. That was not part of the cross examination. And he's going over the same testimony again.

JUDGE PAINTER: I don't think it is being very fruitful. And I assume that this witness is contending that he was of the impression that he could do what he was doing, Mr. Levie.

Can you move on?

MR. LEVIE: Yes, sir.

Q (By Mr. Levie) You've talked about your training program in response to some of Mr. Hecht's questions?

A Uh-huh.

Q What were you told about the nature the guarantee?

A There's no guarantee.

Q Are you instructed to tell your customers there's no guarantee on these options?

A I think our customers get a-- they get a card, which is a full disclosure.

Q Are you instructed to orally tell your customers that there is no guarantee with their option?

A I am not instructed to do it, but I usually do do it. They all know that there's a risk involved. That's perhaps the first thing I said in my sales presentation.

Q Was it your testimony that you say it in some presentations but not in others?

A No, no, no, no. I always-- everyone who invests with me know there's a risk involved.

Q Do they know there's a risk because you tell them?

A Yeah.

Q What do you tell them?

MR. HECHT: Your Honor, I would like to object. There's been direct, there's been cross. He's opening up a whole area that he didn't cover in direct examination. We could go on ad seriatim.

JUDGE PAINTER: I think the question is germaine. This is an administrative proceeding, Mr. Hecht, and I'm sure you are accustomed to operating on much loftier heights.

My purpose here is to get the facts in this record for the Commission to make a determination. And I think that Mr. Levie's question is relevant to the issues.

MR. HECHT: Your Honor, I'd like to point something out here. I don't think the question here is some facts. I think the question here is the whole facts. I understand your concern that an administrative hearing is not bound by the strict rules of evidence that a federal court is. I do practice substantially before administrative agencies. And I consider them the same as a federal court.

JUDGE PAINTER: What's disturbing me, Mr. Hecht, is that we're never going to get through if I have to listen to a lecture from you every 10 minutes. I would like for you to restrain yourself, if possible. And I say that with kind thoughts in mind. I think it behooves us to finish this proceeding. I don't want to arrogant with you, or hostile, or unfriendly. But please don't interrupt and make these useless objections at every other question.

Now, you're overruled. Remain silent. Ask your question, Mr. Levie.

MR. LEVIE: There was a question pending, Your Honor.

Q (By Mr. Levie) Do you recall the question?

A Can you repeat it?

Q With respect to full disclosure, I think the question was, do you give full disclosure in all your presentations or some of your presentations?

A I give-- I let them know, every one of my clients know that there's a risk involved. They also receive a written confirmation of what I say on the back of the account cards, which is I believe signed by Jim Carr.

JUDGE PAINTER: I think that covers the risk, Mr. Levie.

Q (By Mr. Levie) Have you ever retained Mr. Hecht as your attorney?

A Yes.

Q When?

A I retained Mr. Hecht within five minutes after my conversation with you, the first time. Because I did not want you--

JUDGE PAINTER: You've answered the question.

Q (By Mr. Levie) Prior to retaining Mr. Hecht as your counsel, did you ever get any advice from any counsel about your obligation to register with the Commission?

A No.

Q Were you ever told by anyone at Lloyd Carr and Company about your obligation to register with the Commission?

A Yes. When we got the forms.

Q And when was that?

A I've testified to that. I don't recall the date. However, it was approximately two to three weeks before I received the notification-- I would say three, three and a half weeks before-- let's just say two to three and a half weeks before I received that letter from your organization. The first letter.

Q The letter to which you've referred, and you've identified -- I believe it's Division Exhibit 4 -- you said in substance you received a letter like that?

A Like that. It's not Division 4.

Q It's approximately the same?

A I don't recall. This-- as I testified before, this is not the letter. This is something like the letter.

Q My question is, the date on Exhibit 4, is that approximately the date you recall having received the letter which you, in fact, received?

A I don't recall.

MR. LEVIE: No further questions, Your Honor.

JUDGE PAINTER: Mr. Hecht?

MR. HECHT: I just have a few questions.

RECROSS EXAMINATION

Q (By Mr. Hecht) Mr. Shuster, when you say you retained me as counsel, did you formally retain me as counsel? Or did you look at me as counsel for Lloyd Carr and Co?

A Well, I wanted-- I formally have not retained you as counsel. But I asked you to sue Richard Levie on my behalf, even if the company doesn't sue Richard Levie, for harrassment.

Q And what did I say to you?

A You told me that-- you just told me that everything would be in due course. And that I shouldn't worry about it.

Q And you testified on redirect with respect to the application and the check, did you know who the bank was with the branch office?

A Yes.

Q Were you aware of any problem that developed in the bank in February?

A Yes, Absolutely.

MR. LEVIE: Objection, Your Honor. It's clearly beyond the scope of anything that's come up thus far in testimony.

JUDGE PAINTER: I'll hear the question--

MR. HECHT: We got into the question of the bounced check.

JUDGE PAINTER: Please, no cross talk.

MR. HECHT: I'm sorry, Your Honor.

JUDGE PAINTER: I'll hear that last question.

(The previous question was read back by the Reporter.)

JUDGE PAINTER: Yes, Mr. Shuster?

THE WITNESS: Yes, I was aware of problems in the bank b[illegible] I used to frequently cash personal checks down the[illegible], which were drawn on another bank. In fact, Jim Carr sent letters to I believe everybody in our offices to open up accounts with the bank, just to give them some business.

We were using their wire service. They turned out to be-- the bank itself messed up a lot of transactions for us in terms of--

JUDGE PAINTER: Now, are you talking about the bank or the check--

THE WITNESS: The bank.

JUDGE PAINTER: Did I hear you testify, or someone testify this morning that the CFTC didn't honor that check? Now we're stating for the record that the bank didn't honor it?

THE WITNESS: I said I didn't know if it was the bank or if it was the CFTC. One of them. It says it in that letter. Not that letter, but the other letter that I'm to produce. It says who, but I don't remember.

JUDGE PAINTER: All right, next question.

Q (By Mr. Hecht) Does Lloyd Carr and Co's branch office still have an account with that bank?

A No.

Q Do you have personal knowledge of the reasons why Lloyd Carr and Company and that bank are not doing business with each other any more?

A Because they-- they're an old line Connecticut bank that are very-- they just can't handle business effective, quickly. And they just can't handle it. They're not set up, I think, to-- they messed up a lot of our transactions. That's the only thing I can say.

And from a personal point of view, the bank has always cashed my checks, and cashes the checks of several of the other brokers in the office.

Q What did you do prior to the time you became employed by Lloyd Carr?

A I was a leasing salesman.

Q And prior to that?

A Former registered rep, NASD license with the National Association of Security Dealers. I was licensed to see variable annuities for NML Equities, Incorporated out of Milwaukee. I was selling them in New York out of one of their agencies.

Q What was your educational background?

A I attended graduate school at Cornell, and New York University Graduate School of Business. I graduated from the University of Wisconsin. That's about it.

MR. HECHT: I have no further questions.

MR. LEVIE: No further questions.

JUDGE PAINTER: This finishes with this witness. You're to bring in, are you Mr. Shuster, a card and a letter that's been requested by Mr. Levie.

THE WITNESS: Right.

JUDGE PAINTER: You know what he wants?

THE WITNESS: Yes. He wants the letter that the CFTC sent me. And he wants Nick Jones' personal business card, which I have. I'm sorry, but I cleaned out my wallet yesterday.

MR. LEVIE: I think there were some other matters with respect to his sales.

JUDGE PAINTER: Information on--

THE WITNESS: On the number of sales, the amount-- the number of sales and the average sale?

MR. LEVIE: The total amount of the monies his customers paid for option purchases in January 17--

JUDGE PAINTER: From January 17 on. I'm sure you can obtain that.

MR. HECHT: Your Honor, can I give a suggestion. The complaint is only framed from February 23. And I think everything you've subpoenaed is from 1/17/77 through 2/23/77. I think it would be consistent with your complaint.

MR. LEVIE: Acceptable.

JUDGE PAINTER: That's acceptable.

Yes, Mr. Shuster?

THE WITNESS: I would just like to say one other thing. That if the Judge would like to see a list of my customers, and would like to calculate the fact whether they're making money or losing money--

JUDGE PAINTER: I'm not at all curious, Mr. Shuster.

MR. LEVIE: Also, before Mr. Shuster leaves, there's a question of commissions he received between January 17 and February 23.

JUDGE PAINTER: Could you identify that, or give us something showing--

MR. HECHT: I don't believe that question was asked.

JUDGE PAINTER: Skip the commissions. Bring in the number of sales.

THE WITNESS: The number of sales, and average sale?

JUDGE PAINTER: No, not the average. The quantity, the total amount.

THE WITNESS: Okay.

JUDGE PAINTER: You're excused.

(The witness was excused.)

JUDGE PAINTER: Next witness?

MR. LEVIE: Edward Talbot.

Your Honor, at this time I would hand over to Mr. Hecht some-- a total of five pages--

JUDGE PAINTER: Let me swear in the witness first.

Raise your right hand.

Whereupon,

EDWARD J. TALBOT, JR.

was called as a witness by and on behalf of the Commission and, having first been duly sworn, was examined and testified as follows:

JUDGE PAINTER: Yes, Mr. Levie?

MR. LEVIE: I'm handing over to Mr. Hecht at this point, Your Honor, five pages containing my handwritten notes or scribblings in some of my conversations with Mr. Talbot. The first page is not in my handwriting, but it's information that was taken off the Commission hotline.

MR. HECHT: At this time, I'd like to request the Division of Enforcement to furnish to the Administrative Law Judge any Brady material of matters that would be exculpatory, or may be deemed exculpatory to my clients' interest, for review by the Court. And then the Court will release to me what it thinks is appropriate.

MR. LEVIE: I would--

JUDGE PAINTER: Just a moment, Mr. Levie.

Let's take a moment now.

Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

MR. LEVIE: Your Honor, to handle two matters that were taken up, one on the record, and one off, we would ask the court's indulgence and forebearance that in the attempt to make a complete record for the Commission, since the court has full authority to rule on evidentiary questions, that Mr. Hecht be permitted to state his full and complete reasons for his objections. Secondly, Your Honor, with respect to the requests made on the record before your "off" with respect to Brady materials, the position of the Division is that the Brady Doctrine does not apply with administrative hearings, but, in any event, we have no materials which would--which we would represent to the court. We have no materials in the nature of Brady materials. The Jencks Act material will clearly be turned over after each witness has testified, or even to be a little more helpful to Mr. Hecht, we will turn them over when the witness is sworn, rather than waiting to the end of his direct testimony as permitted by the Act.

JUDGE PAINTER: Well, I was thinking that Professor Gelhorn and his little book had indicated that the exculpatory matter should be produced, Mr. Levie, but in as much as you don't have any, you're telling me, why argue about something we can't do anything about?

MR. LEVIE: That's correct, Your Honor.

MR. HECHT: Your Honor, all I can say, and it's a matter of record in another proceeding, the same representation was made and it came out during the actual hearing that there was a substantial amount of exculpatory material which not only was ruled on by the Judge, he gave it over to me and it was all admitted into evidence. I think in this situation, they had contacted customers of Lloyd Carr other than Mr. Talbot, and I think I'm entitled to see the notes on those customers, or at least their being entitled to be turned over to you, and it's your determination to decide whether or not it's exculpatory, and not the Staff's. I made this of record in another proceeding, and the ruling of the Administrative Law Judge, Chief Judge Hunt and his tribunal, and that is his decision to decide what is exculpatory and not the Division of Enforcement, because it makes the so-called exculpatory material under the Brady and the Jencks Act a meaningless rule.

JUDGE PAINTER: I will take it on face value from Mr. Levie that if there is no exculpatory material, there is no exculpatory material for me to review.

Now, Mr. Levie, could you go on with your examination of Mr. Talbot.

MR. HECHT: Could you just note my exception for the record, please?

JUDGE PAINTER: Thank you.

DIRECT EXAMINATION

Q (By Mr. Levie) Could you state your full name and address?

A My name is Edward J. Talbot, Jr. My residential address is 4 Mansfield Drive, Chelmsford, Massachusetts 01824.

Q Mr. Talbot, since January 17, 1977, have you had occasion to purchase commodity options through the Lloyd Carr and Company?

A I have.

Q With whom have you dealt at Lloyd,Carr and Company?

A Michael Shuster.

Q Is that the same individual who testified preceding you?

A Yes, it is.

Q Since January 17, 1977, how many commodity options have you purchased from Lloyd, Carr and Company?

A Between myself and my partner, we have attempted to purchase five options.

Q Directing your attention to January 19, 1977, did you place an order for the purchase of a commodity option through Lloyd, Carr and Company?

A On January 19, 1977, I placed an order with Lloyd, Carr and Company through Mike Shuster for two coffee options and the same day mailed him a check for the amount due.

Q Was that sale consumated?

A That sale was not consumated.

Q Did there come a time when you, in fact, purchased a commodity option from Lloyd, Carr and Company after January 19, 1977?

A Yes, there was.

Q When was that?

A The date was February 2, 1977.

Q Did you have occasion to speak with Mr. Shuster on February 2nd?

A I do not believe that I spoke to him on February 2nd.

Q With whom did you speak on February 2nd?

A. I spoke to Mr. Carr at the Lloyd, Carr and Company in Loston.

Q Did you call Mr. Carr or did he call you?

A Mr. Carr called me.

Q How did he identify himself?

A He identified himself by saying his name was James Carr and I believe he said he was the president of Lloyd, Carr and Company and that he understood there was a problem on the two options that I had purchased on January 19, 1977.

Q What else did Mr. Carr say to you during that conversation?

A Basically, the conversation was that he was walking by the coffee machine and found out through one of his, I believe, office managers or executives within his company that I had stopped payment on a check made payable to Lloyd, Carr and Company on January 19th, the check for the options that I bought. I put a stop-payment on that check on January 27th, 1977, and he indicated that he had just found out about it, which was on February 2, 1977.

Q Did you have any discussion with Mr. Carr on February 2, 1977, concerning the purchase of an option for yourself?

A Yes, I did.

Q What was the substance of that conversation?

A Well, the first part of the conversation was that, number one, he called to apologize to me, personally, for the mishandling of the option or options that I had purchased in that I did not receive a strike price on the options prior to January 27th and that's why I put a stop-payment on the check. He called to personally tell me that there was no reason for the delay and that he would personally see that type of thing would never happen again within his organization.

Q Was there any discussion in that same conversation with Mr. Carr about whether or not you would or should purchase another commodity option--purchase any commodity option?

A Oh, yes, sir, there was. At that time, Mr. Carr suggested that I purchase the same options that I had attempted to purchase on January 19th. He spoke to me for about ten minutes explaining to me what the situation was in terms of buying the options and suggested that I had made a mistake by putting a stop-payment on the check, because he felt that it was a good investment and that if I kept the two options I would more than likely make some money and suggested that I buy two more options.

Q Based on his suggestion in that conversation of February 2nd, 1977, did you do anything?

A I told Mr. Carr that I would get back to him that afternoon and I spoke to my partner relative, if you will, to the repurchase of two more options, and we jointly decided that we would buy one option rather than two. That afternoon, I sent a check to Mr. Carr in the amount of $4,580.00, my check number 1679, made payable to Lloyd, Carr and Company.

Q May I have a copy of the check, please?

A You may have a copy of it, but I would like to have the check back.

JUDGE PAINTER: Mr. Hecht?

MR. HECHT: Your Honor, we spoke to the clerk--Mr. Costikyan was here--that they were told to file as promptly as possible. It was their determination that it was Friday, and we intend to, I guess, tonight, so you can tell General Counsel that when this hearing is done, I will prepare a motion for them to file a response by 11 o'clock tomorrow. That is more than--they've got more than ample time, but that didn't come from the court, that was their determination. I think we should set that straight.

MR. STEWART: Your Honor, so the record is to be straight, Mr. Hecht is well advised, and knows very well, that the General Counsel represents the Commission with respect to matters in the Courts of Appeals. I'd be glad to pass on messages, but I suggest that he communicate directly with those people at the Commission who do that work. I don't do it.

JUDGE PAINTER: I think that might be advisable, knowing very little about the mechanics of our own Commission, but I'm sure that Mr. Stewart is giving you good advice. Pick up the phone--you'll find an FTS phone in the building--and give him a ring and say--

MR. HECHT: They, Your Honor, are the ones conducting this hearing. They can't say, "Well, it's that guy's fault." They are the one who are conducting it. They are the ones who have the option--

JUDGE PAINTER: I wish to correct you again, Mr. Hecht. I am supposed to be conducting this hearing. I think everyone else is trying to, though. Now, if we can get back to the business at hand?

All right, Mr. Levie.

Q (By Mr. Levie) Mr. Talbot, I show you what has been marked as Division Exhibit 6 for identification. Can you identify that document?

(The document above-referred to was marked Division's Exhibit 6 for identification.)

A Can I identify this document here?

Q Yes?

A This is the document we just spoke about. It's my check to Lloyd, Carr and Company for the purchase of a call option, five metric tons of coffee.

Q And was your bank account debited for the amount of that check?

A Yes, it was. It was my cancelled check.

MR. LEVIE: Your Honor, I would move to admit into evidence Division Exhibit 6.

JUDGE PAINTER: Any objections, Mr. Hecht?

MR. HECHT: Absolutely not, Your Honor.

JUDGE PAINTER: So admitted.

(The document previously marked Division's Exhibit 6 for identification was received in evidence.)

One thing, you haven't made your move yet on 1 through 5. Why don't you move 1 through 5 in? Then we'll hear Mr. Hecht's objections to these individual exhibits.

MR. HECHT: Your Honor, believe it or not, they're appropriate.

JUDGE PAINTER: Thank you, Mr. Hecht, I'm glad.

Mr. Levie, these are the documents you have tendered--

MR. LEVIE: If I will withdraw Division Exhibit 1, I will withdraw Division Exhibit 2, I will withdraw Division Exhibit 3, and I will seek to introduce Division Exhibit 4 as having identified by Miss Schaeffer, and Division Exhibit 5, Your Honor, I would ask to withhold, moving on, because Mr. Shuster has indicated he will produce the letter he, in fact, received. I think we ought to wait and see if it is, in fact, the same or different from it.

JUDGE PAINTER: Mr. Hecht?

MR. HECHT: Yes.

JUDGE PAINTER: Do you have any objections to the admission of Division's Exhibit 4?

MR. HECHT: No, Your Honor. I do have an objection to Division Exhibit 5, since the witness testified he had no knowledge of receipt of this letter.

JUDGE PAINTER: That hasn't been moved in yet, so you're a little ahead of time. Exhibit 5 we're deferring on, so Exhibit 6 is the check. Any objection to the check?

MR. HECHT: I said no before, Your Honor.

JUDGE PAINTER: It is admitted.

MR. LEVIE: May I ask leave to have a photocopy made and substituted for the original so that Mr. Talbot can keep the original check?

MR. HECHT: I have no objection.

JUDGE PAINTER: Okay, Mr. Levie, Division's Exhibits 1, 2 and 3 are withdrawn, Division's Exhibit 4 is admitted, you are withholding Division's Exhibit 5 for admission at a later time, and Division's Exhibit 6 is admitted.

Please continue.

Q (By Mr. Levie) Mr. Talbot, did there come a time subsequent to February 2, 1977, that you again had occasion to purchase commodity options to Lloyd, Carr and Company?

A Yes, sir.

Q When was that?

A February 28, 1977.

Q With whom did you speak on February 28, 1977?

A Throughout the course of the day, I spoke to Mike Shuster and Mr. Carr.

Q What did Mr. Carr tell you on the 28th?

A He told me that he still thought that buying call options in the coffee market, in the London coffee market, was still a good investment and that if his alalysts were correct in forecasting the price of coffee, he said he thought a conservative figure would be in the area of 5,200-pound sterling per metric ton.

Q You did purchase options, as I understand, on the 28th, is that correct?

A On the 28th, I put an order in to buy two call options at 5,000 metric tons per option.

Q What was the amount involved to pay for those?

A They were $4,910.00 a piece and I gave Lloyd, Carr and Company that day my check number 1697. In the amount of $4,910 times two, whatever that is. $9,820.00.

Q Was your decision to purchase those options on February 28th related in any way to your conversations with James Carr?

MR. HECHT: Objection. It asks for a state of mind and not a fact..

JUDGE PAINTER: Well, I would like to know the motivation for his--why did he decide to make the purchase, Mr. Hecht? Answer the question, please.

THE WITNESS: I would like to answer the question. Both Mr. Carr and Mr. Shuster suggested that it would be a good investment to buy these coffee options and I believed both of them and that's why I bought them. End of conversation. Period.

Q (By Mr. Levie) What, if anything, has Mr. Shuster told you in the way of disclosure and the risks of the nature of investing in commodity options?

MR. HECHT: Your Honor, I'd object. That's clearly outside the scope of the complaint.

JUDGE PAINTER: Was risk involved in the complaint in any way, Mr. Levie?

MR. LEVIE: Your Honor, Mr. Shuster was permitted to testify as to his disclosures to risks and what he tells his customers as to what is involved, and I think--

JUDGE PAINTER: We're probably going outside the complaint, but I'd like to hear from your, Mr. Talbot. Did they tell you about any risk involved?

MR. HECHT: Just note my exception, please?

JUDGE PAINTER: It's noted for the record, Mr. Hecht.

THE WITNESS: Mr. Shuster indicated the risk involved to me and to my partner relative to the purchase of these options are in detail,approximately the day before I--for the record, if you will, January 26th, I believe, was the date.

JUDGE PAINTER: Doesn't that benefit your client, Mr. Hecht?

MR. HECHT: Yes, it does, but, YOur Honor, I've been around a little too long to know that if I waive at this time that I may be waiving it in subsequent questions and areas and I want to preserve my rights.

JUDGE PAINTER: All right, Mr. Hecht.

MR. LEVIE: I have no further questions, Your Honor.

JUDGE PAINTER: Any cross?

MR. HECHT: Yes, Your Honor.

CROSS EXAMINATION

Q (By Mr. Hecht) Mr. Talbot, would you prefer I call you "Ed" or "Mr. Talbot"?

A You may call me "Ed".

Q Ed, when you--what kind of business are you in?

A I own a real estate and insurance company in Chelmesford, Massachusetts.

Q When you stopped payment on those checks, isn't it a fact that the company never sued you?

A What company?

Q Lloyd, Carr?

A It is a fact that they did not sue me.

Q And they tried to find out what was behind the problem?

A Correction. I tried to find out what was behind the problem.

Q You stopped payment on the check?

A Right. On January 27th.

Q You stopped payment on the check?

A On January 27th, at 10 o'clock in the morning.

Q What was your reasoning behind that?

A I would like to point out that Mr. Carr openly admitted to me that his firm mixed up on this particular buy.

Q So they figured that because of the situation and--there was no hassle and they didn't say to you that you had to keep the option?

A Correction. There could not have been a hassle, because they didn't provide me with a strike price within a reasonable length of time.

Q But they never gave you any problem about it? That particular transaction?

A No, sir. They had no reason to. They were wrong and they admitted that they were wrong.

Q Okay, and you, as a real estate broker, when you feel you're wrong, you admit that to your clients?

A Absolutely, and pay dearly.

Q Which is just what happened here?

A Possibly true, yes.

Q Thereafter, did you subsequently receive a call from Mr. Levie?

A Thereafter, what?

Q After January 28th?

A After January 28th? Yes, I have received several telephone calls from Mr. Levie, of which I cannot give you the exact dates. I'm sorry.

Q Did you call him first or did he call you?

A I indirectly called him; however, I did not know that I was calling him. On January 27th, at 9 o'clock in the morning, I called my bank because I was nervous about investing round numbers--$10,000--in this coffee market and I did not receive a strike price. I called two stockbrokers that I had done business with in the past and asked them their advice relative to buying call options. They were not qualified to give me an answer. I then called Hornblower, Weeks and Company--I believe it was their Burlington office--and I abstracted the information from the Yellow Pages in the telephone book, called them, and I spoke to an account executive down there and explained to her what I was interested in finding out and she gave me an Area Code 800 number, which was a hot line to, I believe, your division of the United States Government, Federal Commodities Trade Commission Hot Line, I think. I'm not positive, but I could find the number if I have to. I explained the problem to her; she promised me that she would deliver the information to someone and that either she or someone would call me back within 20 minutes. Within 20 minutes, Mr. Levie had called me on the telephone to find out what my problem was.

Q Prior to that date, did you receive from the company a confirmation slip?

A I received--

Q And did you bring them with you today?

A Yes, I did. I only have one of two, and I'd like to explain why. I have a partner whose name is Ralph Senna and we ordered two of these things. It was duplicate, okay?

MR. LEVIE: I believe it would be Respondent's Exhibit 3 for identification, is that correct?

MR. HECHT: Now, you want to mark it, you can mark it.

JUDGE PAINTER: Put it down as the Bench Exhibit 1, B-1.

(The document above-referred to was marked Bench Exhibit 1 for identification.)

Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

Q (By Mr.Hecht) Did you open an account--did you open or sign or attain a new account card from Lloyd, Carr and Comapny?

A I don't believe I ever signed an account card.

Q But did you read it, and do you have a copy with you?

A I did not read it, and I do not believe I have a copy. I'm not sure what you're talking about, sir.

Q Did you read the disclaimer on the back?

A No.

Q Did you ever turn it over and look at it?

A No.

Q Did you notice any typing on the back?

A I don't know what you're talking about, sir. An account card sounds like something that's in Lloyd, Carr's office, is that what you're talking about? I've never seen

MR. LEVIE: I believe it would be Respondent's Exhibit 3 for identification, is that correct?

MR. HECHT: Now, you want to mark it, you can mark it.

JUDGE PAINTER: Put it down as the Bench Exhibit 1, B-1.

(The document above-referred to was marked Bench Exhibit 1 for identification.)

Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

Q (By Mr.Hecht) Did you open an account--did you open or sign or attain a new account card from Lloyd, Carr and Comapny?

A I don't believe I ever signed an account card.

Q But did you read it, and do you have a copy with you?

A I did not read it, and I do not believe I have a copy. I'm not sure what you're talking about, sir.

Q Did you read the disclaimer on the back?

A No.

Q Did you ever turn it over and look at it?

A No.

Q Did you notice any typing on the back?

A I don't know what you're talking about, sir. An account card sounds like something that's in Lloyd, Carr's office, is that what you're talking about? I've never seen it, if that's what you're referring to.

Q What other documents have you received from Lloyd, Carr?

A The other document I received from Lloyd, Carr was a document and a letter received by my--by me--on February 14, 1977, which confirms a purchase of five metric tons of coffee, a call option.

Q What was the strike price on that?

A The strike price was $3,018 per unit.

Q Can I just take a look at that prior to asking any questions?

A Certainly. You can take these three exhibits, if you like. I received them all at the same time. Also with the letter from Mr. Hagen, if you'd like to see that?

MR. HECHT: I'm going to request a recess, Your Honor. I have some technical questions to ask.

JUDGE PAINTER: Off the record.

(A short recess was taken.)

JUDGE PAINTER: On the record.

The Reporter has given me a Xerox copy of the confirmation and invoice which I have admitted into the record as Exhibit B-1.

(The document previously marked Bench Exhibit 1 for identification was received in evidence.)

I believe, Mr. Hecht, you were questioning the witness.

MR. HECHT: Yes. YOur Honor, I've seen these documents, and I just wanted to see them.

THE WITNESS: May I have the originals back?

MR. HECHT: Here, we'll do it right now.

THE WITNESS: Thank you.

Q (By Mr. Hecht) Mr. Talbot,did you ever receive a hard, white piece of paper, around 5 x 7, from Lloyd, Carr that asked for such information as your Social Security Number?

A To be very honest with you, I do not remember.

Q Do you recall discussing this with Mr. Shuster?

A I do not.

Q With respect to these particular transactions, do you recall making any transactions or having any dealings to do with Lloyd, Carr subsequent to the time Mr. Levie spoke to you?

A Mr. Levie has spoken to me several times, and you question is not specific enough for me to answer you.

Q After you spoke to Mr. Levie the first time, did you purchase any commodity options through Lloyd,Carr?

A Yes, I did.

Q Did Mr. Levie advise you of any pending litigation between the parties?

A Mr. Levie told me that Lloyd, Carr and Company were not licensed with the Federal Commodities Exchange Commission.

Q Isn't it a fact that he never told you that Lloyd, Carr and Company had filed a registration application?

A I do not believe that is a fact. I believe that he and also Mr. Carr, on two different occasions, mentioned to me that they had filed for a license to sell these options and to be in good shape with the Federal Government.

Q Do you know where the Lloyd, Carr--were you aware that Lloyd, Carr and Company was registered with the CFTC as a commodity trading advisor?

A No, I was not aware of that fact.

Q Did you ask Mr. Levie if they were registered in any way, shape or form with the CFTC?

A I do not think I asked that question, sir.

Q Did you ask anything about the status of their registration with the agency?

A I don't believe I asked that question either.

Q Other than telling you that they were not yet licensed, did he define for you what he meant by that term?

A He did not.

Q So, from that, was it your impression that Lloyd, Carr was not licensed in any form with the CFTC?

A After speaking with Mr. Levie, it was my definite impression that, number one, Lloyd, Carr and Company was not licensed with the Federal Commodity Exchange Trade Commission; however, after talking to Mr. Carr on February

2nd, I believe, Mr. Carr specifically indicated to me that his company had made application to the Federal Commodities Trade Commission and that it was in the process of being processed, and that there was nothing for me to worry about. Everything that they were doing was completely legal and that they were the forerunners in having, if you owe a segregated customer account, which he explained to me was that my monies went into a special account until such time that the option was struck. That was the extent of my conversation.

Q And that was your conversation with him on January 27th?

A No, that wasn't the date, sir. The date was February the 2nd. I did not speak to him on January 27th.

Q Your original order was cancelled, right?

A I put a stop-payment on a check on my original two orders.

Q Thereafter, what was the next purchase you made through Mr. Shuster at Lloyd, Carr?

A Technically, I did not make the purchase--second purchase--through Mr. Shuster. I made it directl[illegible]th Mr. James Carr over the telephone.

Q Did you get a copy of a confirmation slip with respect to that transaction?

A I've answered that question once before.

Q That's the second transaction?

A I've answered your question before, sir.

JUDGE PAINTER: Well, give it to him again.

THE WITNESS: I received confirmation on February 14th, 1977, along with a letter from Mr. DAvid D. Hagen, Branch Manager, from Lloyd, Carr and Company. His letter was dated to me February 8th, 1977.

Q (By Mr. Hecht) In fact, wasn't the receipt that you received from Lloyd, Carr and Company, which is like this receipt number 2 here, signed by Mr. Hagen as the Branch Manager?

A I received in the mail on February 14, 1977, from Mr. Hagen, the Branch Manager, copies number 1, 2 and 3 of my option transaction number 5223-COR.

Q And you were aware that Mr. Hagen was the Branch Manager of the Greenwich office?

A I was not,until receiving this letter.

MR. LEVIE: Excuse me, Your Honor, we've been referring to letters and documents. WE have Xerox copies of them, and can we have them marked and referred to by number for purposes of the record?

JUDGE PAINTER: Would you have them marked for identification, Mr. Hecht?

MR. HECHT: I am handing to the Court Reporter as Respondent's Exhibit 3 a copy of a 1-page letter, dated

February 8, 1977, and I respectfully ask that the Court Reporter mark that as Respondent's Exhibit 3.

(The document above-referred to was marked Respondent's Exhibit 3 for identification.)

MR. LEVIE: Can we have some of the others marked at the same time?

MR. HECHT: Your Honor, at this time, I am giving the Court REporter a photostatic copy of a document entitled, "Confirmation and Invoice", and on the left-hand margin it refers to a number one. Can I ask the Reporter to mark this as Respondent's Exhibit 4.

(The document above-referred to was marked REspondent's Exhibit 4 for identification.)

It should be noted that that is in the name of Mr. Edward Senna, and not Mr. Talbot.

THE WITNESS: Correction. It's Ralph Senna.

JUDGE PAINTER: Thank you, Mr. Talbot.

MR. HECHT: Thank you, Mr. Talbot.

I am next handing to the Court Reporter a document, a copy of a 1-page document, entitled a"Confirmation and Invoice", and it's a number one document to Mr. Edward Talbot for reflecting a purchase of a coffee call ordered on February 28, 1977, and I ask the Reporter to mark this as Respondent's Exhibit 5.

(The document above-referred to
was marked REspondent's Exhibit
5 for identification.)

MR. HECHT: I am next handing to the Court Reporter a 1-page document entitled, "Confirmation and Invoice", and may I respectfully suggest, since that these all relate--the next three documents--to the order of January 19, 1977, and they represent copies 1, 2 and 3, that we file them as a group exhibit, Respondent's Exhibit 6, if it's okay with the court?

JUDGE PAINTER: Granted.

MR. HECT: I ask the Court REporter--

THE WITNESS: Excuse me. I'd like to just correct something right now for the record. The three documents that you are talking about, the date of order is January 19th; however, that order was actually placed by me on February the 2nd. This is a result of my telephone conversation with Mr. Carr.

MR. HECHT: I ask the Reporter to respectfully mark this as Respondent's Exhbit 6, and that he mark each of the documents. Number one is 6(a); document number two is 6(b); and document number three is 6(c).

(The documents above-referred to
were marked Respondent's Exhibits
6(a) through 6(c) for identifi-
cation.)

Your Honor, may I have a one-minute recess?

JUDGE PAINTER: Off the record.

(A short recess was taken.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Hecht) Do you know what the price of coffee was with respect to REspondent's group Exhibit 6 at that time? Per pound?

A Do I know what coffee was per pound on that day?

Q Approximately?

A No, I really don't know.

Q Do you know how many pounds are in a coffee contract?

A Yes, I do.

Q How many pounds are they?

A Five metric tons. Eleven thousand--somewhere in that area. I can look that up--

Q Do you know what your strike price was?

A On the order that I placed on February 2, 1977, yes I do.

Q What was your strike price?

A 3,018 pounds sterling per unit.

Q Do you know what the value of coffee is now?

A Today? I understand it's approximately 4,000 pounds per sterling. That's just an estimate.

Q ARe you aware that this particular call option is in the money?

A Yes, sir. I am.

Q Are you aware that you have a profit in this?

A Yes, I am.

Q Have you liquidated this or do you still own this particular option?

A I still own it and I understand from my competant advisor that there is a mechanism by which if it drops down in price it will be sold automatically and that I will not lose any money.

Q Who is your competant advisor?

A Mr. Shuster.

Q With respect to Respondent's Exhibit 5, when you purchased that particular option, did you discuss this with Mr. Shuster?

A Absolutely.

Q Isn't it a fact that you gave him the order on February 28, 1977?

A That is a fact.

Q Isn't it a fact that this is after you had spoken to Mr. Levie?

A Absolutely.

Q Did you ask Mr. Shuster about the litigation involving Lloyd, Carr and the CFTC?

A I did.

Q What did Mr. Shuster advise you?

A Technicality.

Q Could you explain that involved the application of Lloyd, CArr?

A No, we did not get into that type of conversation.

Q Did you ever call anyone else at Lloyd, Carr and Company and inquire further about the status of the litigation?

A The only conversations I've ever had with Lloyd, CArr have been with Mr.Carr, himself, Mike Shuster, and on one occastion, I spoke to somebody whose name I have no idea, just to find out the current price of coffee options that day.

Q Did they give you that information?

A Yes, they did,

Q In fact, you did purchase a coffee option--

A Two--

Q Two, on that day?

A February 28, 1977.

Q Do you have the confirmation and invoice slip relating to the second purchase?

A I have the confirmation and invoice slip, which is marked Exhibit B----I believe.

Q Is that Bench Exhibit 1?

A No, sir.

MR. LEVIE: Mr. Hecht, I believe it might be Respondent's Exhibit 4--

THE WITNESS: Respondent's 4 and 5.

Q (By Mr. Hecht) So R-4 and R-5 represent two separate transactions?

A 4 and 5 represent my check in one amount for both of these options, one in my name and one in my partner's name, Mr. Ralph Senna.

Q Did you instruct the company to purchase the second option for Mr. Senna?

A I sure did.

Q In--has Mr. Senna reimbursed you for that?

A AS of today, no. I would like to just clarify something. My business with Mr. Senna is my personal business and has nothing to do with this inquiry.

Q I understand that, but I see the confirmation slips and your check paid for them, and I understand--I'm not trying to personally embarrass you--but as an attorney, I look at the document and I think it's just a reasonable request. Since you said that you purchased them, and the confirmation slip says it in someone else's name, it's just a logical question. I didn't mean anything to personally interfere with you, because I understand you came here voluntarily. As a real estate broker, are you licensed with the--Connecticut?

A No, I am not.

Q Does Connecticut have a licensing provision?

A I have no idea.

Q Have. you ever looked into it?

A I'm a licensed real estate broker in the State of Massachusetts.

Q ' Excuse me. Does Massachusetts have a licensing provision?

A They most certainly do.

Q Do you fill out an application?

A Once a year.

MR. LEVIE: Objection as to relevancy, Your Honor.

JUDGE PAINTER: I don't think commodity options is too much related to real estate selling, Mr. Hecht. No harm done.

MR. HECHT: Okay, I'll go about it in another way, YOur Honor. Thank you.

Q (By Mr.Hecht) Do you feel that you fully understand commodity options to sufficiently invest in them?

A AS of this date, yes, I do.

Q How often a week do you and Mr. Shuster get in contact with each other?

A At least once a week.

Q Does he try to answer all your inquiries?

A Yes, He does.

Q Is there any inquiry that you've ever asked him that he hasn't answered for you?

A Immediately, or within a reasonable length of time?

Q Within, let's say, the last three weeks?

A Within the last three weeks, every questions that I have ever asked Mr. Shuster, he has answered for me immediately.

Q The only problem you had was the original transaction?

A That is it.

Q Since that time, are you happy with your relationship with him?

A Yes, I am.

Q And with Lloyd, Carr and Company?

A Yes.

Q Do you feel they've dealt fairly and honestly with you?

A Yes.

Q Would you like to continue to do business with them?

A Yes.

MR. HECHT: I have no further questions.

JUDGE PAINTER: Mr. Levie?

REDIRECT EXAMINATION

Q (By Mr. Levie) Mr. Talbot, Respondent's Exhibit 3, is that an accurate copy of the letter you received?

A This is an original that I'm looking at. Yes, it's accurate.

Q I show you what's been marked as Respondent's Exhibit

4 for identification. Is that a fair and accurate copy of the document you received from Lloyd, Carr?

A Yes, it is.

Q I show you Respondent's Exhibit 5 for identification and ask you if that'a a true copy of the document you received from Lloyd, Carr and Company?

A Yes, it is.

Q I show you Respondent's Exhibits 6(a), 6(b) and 6(c) and ask you if they are true and accurate copies of the documents you received from Lloyd, Carr and Company?

A Yes, they are.

MR. LEVIE: At this time, Your Honor, I would move into evidence, or seek leave of court, to put into evidence as Division's exhibits what have previously been marked as Respondent's Exhibits 3, 4, 5 and 6(a) through 6(c). I would ask that they be renumbered as Division's Exhibits-- and entered into evidence.

JUDGE PAINTER: Would you like to make them as Joint Exhibits, Mr. Hecht?

MR. HECHT: your Honor, I have no objection. They are already marked as our exhibits. I feel that they are an appropriate part of the court's inquiry. They do reflect the customer--they do reflect a portion of the customer's records--

JUDGE PAINTER: Have you moved to have these introduced?

MR. HECHT: I haven't yet, because I was going to move that at the conclusion of his testimony.

JUDGE PAINTER: All right, at the conclusion of his testimony, Mr. Hecht will move them into the record and--they belong to the record--and I just don't want to take the trouble of remarking them.

MR. LEVIE: Then his testimony is concluded from my point of view, Your Honor.

JUDGE PAINTER: Fine. You're excused, Mr. Talbot. Thank you very much.

(The witness was excused.)

MR. LEVIE: Your Honor, may I request that Mr. Talbot--excuse me, Mr. Hecht--give me back the Jencks Act materials from Mr. Talbot, of which he has the originals. We'll Xerox them and provide him a copy for his records.

JUDGE PAINTER: Will you do that, Mr. Hecht?

MR. HECHT: Yes, your Honor, without waiving, this--I should point out--is apparently Mr. Levie's notes of the conversation, except with respect to, apparently, a hot-line annotation and they don't have any relevancy to this proceeding.

JUDGE PAINTER: You may not even want a copy of it, Mr. Hecht?

MR. HECHT: Oh, I'd like a copy for my files.

JUDGE PAINTER: Very well, if you refer to Mr. Levie, and he'll get you a copy.

MR. HECHT: And I might have some questions after--

JUDGE PAINTER: Now, did you want to move these exhibits in, before we overlook them?

MR. HECHT: Yes, Your Honor. At this time, I 'd like to move into--for admission into evidence--Respondent's Exhibits 4, 5, and group Exhibit 6--

MR. LEVIE: Can we add to that, Respondent's Exhibit 3, which is the letter--

JUDGE PAINTER: The letter was marked as 3. You have no objections--

MR. LEVIE: That's Mr. Hagen's letter.

MR. HECHT: Yes, I have no objection, Your Honor, but I should point out that it does have limited relevancy to this action.

JUDGE PAINTER: There being no objection, Respondent's Exhibits 3 through 6, including 6(a), 6(b) and 6(c), are admitted into the record.

(The documents previously marked Respondent's Exhibits 3, 4, 5, and 6(a) through 6(c) for identification were received in evidence.)

JUDGE PAINTER: Off the record.

(A short recess was taken.)

JUDGE PAINTER: Back on the record.

JUDGE PAINTER: Okay, Mr. Levie, your next witness, please.

MR. LEVIE: Yes, Your Honor. I call James O'Brien.

Whereupon,

EDWARD O'BRIEN

was called as a witness by and on behalf of the Commission, and having first been duly sworn, was examined and testified as follows:

MR. HECHT: Your Honor, just a minute. Since there's been a switch, I have some documents relating to Mr. O'Brien and I'd like to get them out of the file.

JUDGE PAINTER: Off the record.

(A short recess was taken.)

JUDGE PAINTER: Back on the record.

MR. LEVIE: For the record, immediately after going off the record, I tendered to Mr. Hecht two memoranda to files by Mr. O'Brien dated January 27 and January 31, 1977. In the nature of Jencks material. I believe off the record we also discussed REspondent's Exhibits 1 and 2, 1 being a group exhibit which was rejected, and Respondent's Exhibit 2, which was a letter of Mr. Shuster to Mr. Levie, and which Mr. Hecht indicated off the record that he intended to take some action on.

JUDGE PAINTER: Well, in the absence of any objection Respondent's Exhibit 2--

MR. LEVIE: There is an objection, Your Honor. I was waiting to hear from Mr. Hecht to see if he was formally offering it into evidence.

MR. HECHT: Yes, I am. I am formally offering it into evidence. I think it is material and relevant and it goes directly to one of the points raised by Respondent.

MR. LEVIE: Your Honor, number one, it is not relevant to the issues. The Commission is not on trial here. The only question is whether the company is fit to be registered and whether the individuals should be sanctioned as requested in the complaint. Secondly, Respondent's Exhibit 2 is a complete self-serving document of the persons who wrote it, having no relevancy to the issues of this case.

JUDGE PAINTER: The objections notwithstanding are overruled. It is submitted into the record for what it's worth. I understand that is one of the worst statements an Administrative Law Judge can make, but we've made it again.

MR. HECHT: I might as well move for admission into evidence the material referred to in Miss Shaffer's examination, which consists of her pencil notes and related material, and I ask the Reporter to mark it as REspondent's Exhibit 1. I understand that the court has ruled that it is not proper in evidence, but in accordance with the administrative procedures, I ask him to mark it and let be ancillary to the record.

JUDGE PAINTER: Respondent's Exhibit 1 is rejected. it will be marked for identification and forwarded to the Commission, however, as a rejected document along with the other material. Respondent's Exhibit 2, however is received

(The documents above-referred to were marked Respondent's Exhibits 1 and 2 for identification. Respondent's Exhibit 2 was received in evidence, but Respondent's Exhibit 1 was rejected.)

Mr. O'Brien, we're ready for your testimony.

DIRECT EXAMINATION

Q (By Mr. Levie) Mr. O'Brien, state your full name for the record?

A Edward O'Brien, Jr.

Q Where are you employed, Mr. O'Brien?

A At the CFTC, in the Washington office.

Q Were you employed by the CFTC's predecessor agency, the Commodity Exchange Authority?

A Yes, I was.

Q How long have you been employed by the two organizations?

A A total of about 20 years, I guess.

Q What is your position with the Commission at present?

A I'm the Associate Director of Trading and Markets Division.

Q Were you so employed on January 27, 1977?

A Yes, I was.

Q Directing your attention to the date of January 27, 1977, did you have occasion to have a telephone conversation with Mr. Charles Hecht?

A Yes.

Q Did Mr. Hecht identify himself?

A Yes.

Q As what?

A As counsel representing Lloyd, Carr and Company and James Carr.

Q Did you make a request of Mr. Hecht from that conversation on January 27, 1977?

A As I recall, I believe you were there, Mr. Levie, at the time, and I think you made the request.

Q What was the request you heard made to Mr. Hecht?

A I heard you request him if he would object or prevent two auditors and one CFTC investigator coming to the offices of his client, Lloyd, Carr and Company, for the purposes of doing an audit and whatever other investigation they might feel appropriate at the time.

Q Was there any mention of examination of the records of Lloyd, Carr and Company regarding option sales?

A Specifically, I don't recall. All we we're talking about was any and all records to do the audit and to do an investigation of any other material that might be appropriate.

I don't know of any specific reference to any option record, per se.

Q What was Mr. Hecht's response?

A His response, as I recall, was, "If you register my client, you can have access to any and all records that you feel are necessary to conduct your audit or investigation."

Q Any disucssion about what his position would be if we did not--if the Commission--did not agree to register his client prior to his seeking an inspection of the records?

A Mr. Hecht, as I recall, was very evasive for a while. You kept pressing him on the matter, until finally he said, "No, under those circumstances, I would not advise my client to make these records accessible for audit or investigation purposes."

MR. LEVIE: No further direct examination.

MR. HECHT: Your Honor, I am waiting for this document, which I need to cross examine him. They've run over to get it. I will begin my cross examination, but I'm saying I know Mr. O'Brien wants to get home. That's why we've worked this out this way, but if I get to the end of my questions and the document is not here, I just ask the patience of the court.

JUDGE PAINTER: We'll see what my patience are like at that time. Go ahead, Mr. Hecht.

MR. HECHT: Thank you, Your Honor.

CROSS EXAMINATION

Q (By Mr. Becht) Mr. O'Brien, how many years of experience did you have auditing commodity option firms and commodity firms?

A I've had very limited--in fact, no really direct experience at all--as far as commodity option firms go. I've had well over 20 years in auditing commodity futures firms, plus the fact I was in the futures brokerage business for about 9 and 1/2 years before entering the government.

Q And you've been with the government ever since?

A Yes.

Q Were you aware of arrangements mad with your staff subsequent to January 18, 1977, for your audit staff to inspect the books and records of Lloyd, Carr?

A Of the Carr complex.

Q In that connection, do you recall who made the arrangments? For the audits to be conducted?

A Mr. James McCarthy, out of New York. He's in charge of the audit team, pertinent to the Eastern REgional Office.

Q Was there some sense of urgency in getting someone up there quickly?

A No more so than the urgency in regard to all other option dealers that wanted to be registered by the deadline, January 17th. As I recall, Lloyd, Carr came in with their application--the Lloyd, Carr Financial Company came in with their application on January 17th, which didn't give us much time.

Q Were you aware that they originally filed back on October 1st?

A Yes.

Q In this period of January 17 or 18th, 1977, were you aware that Lloyd, Carr was involved in the so-called commodity options regulation litigation?

A The British American situation?

Q Right?

A I would say, probably in all truth, no, not at that time. I was not.

Q Do you recall being advised by General Cousnel or any attorney with the Division of Enforcement that certain representations had been made to the court with respect to the audit of Lloyd, Carr--the Lloyd, Carr complex?

A When?

Q In that period of the 18th and the 19th of January, 1977?

A Not that I recall.

Q How about the 17th?

A Not that I recall.

Q Did you discuss this with Mr.McCarthy?

MR. LEVIE: Discuss what?

MR. HECHT: The Lloyd, Carr audit in that period of the 17th, 18th and 19th?

A I don't specifically recall discussing Lloyd, Carr. I probably did, because we, at the time, had about 20 option firms we were conentrating on, and Lloyd, Carr was just one of the bunch.

Q Do you know if, in fact, Mr. McCarthy sent any of his people up to Lloyd, Carr?

A Yes, I do. On the 20th and the 21st, I believe.

Q What were the names of those persons?

A I believe Mr. Purta and Miss Waimon Chan.

Q During their audit, did you have any discussions with them on the 18th and 19th--excuse me, the 20th and the 21st of January? The 19th and 20th?

A What specific day was that?

Q Thursday and Friday of that week?

A I think the first very vague and general conversation I had on Lloyd, Carr that I recall, relative to their audit, was that Miss Chan was coming down to Washington on Monday to discuss it.

Q Do you report a number of telephone conversations with Mr. McCarthy and myself on Friday about certain requested changes that the audit staff was suggesting to Lloyd, Carr?

A I probably know the change that you're talking about, but I don't think I was aware of it on that Friday.

I really didn't get involved in it.

Q This was up to Mr. McCarthy?

A Yes, sir.

Q Are you aware of Mr. McCarthy or anyone on his staff advising Lloyd, Carr and Co. at the close of business on Friday that they satisfied all of the financial and record-keeping requirements?

A I'm aware, later on, very subsequent to that date, that such a general statement was made, but I don't think it was that clear-cut.

Q Do you know who made the general statement to Lloyd, Carr?

A I believe Miss Chan.

Q Did you authorize instructing Lloyd, Carr and Co. that because of the regulations that were just effective, that if the customers' money was in, they should hold it in an escrot account, pending their effectiveness? Either on Friday or the following Monday?

MR. LEVIE: Objection to the form of the question, Your Honor. He said two completely different concepts there.

MR. HECHT: I'll break it into one.

Q (By Mr.Hecht) Are you aware of a discussion by members of your staff wherein you recommended to--

A I recommended?

Q You or somebody on your staff, were you aware of any discussion to that effect?

A I'm not specifically aware of anything like that. That's not to say it didn't happen. I don't know. In fact, I might have said something. I really don't know, because there were about 20 option firms we were dealing with at that time and I was just--I know I talked to Jim Carr several times--I might have said something along those lines, but I can't swear to it. I really can't.

Q Did you subsequently become aware that Lloyd, Carr and Co. held those funds in escrot for a short period of time?

A Not that I recall.

Q Are you aware that, after theclose of business on Friday of that week, that Lloyd, Carr had been advised that they would be registered on around 10 o'clock Monday morning?

A No, I'm not aware of that.

Q Did you authorize any member of your staff to represent to Jim Carr or anyone else at Lloyd, Carr and Co. that Lloyd, Carr and Co. satisfied the minimum financial requirements?

A No.

Q Were you aware on Friday that they did satisfy the financial requirements?

A No.

Q Were you aware on that Thursday?

A No. I was never aware that they satisfied the financial requirements. I had indicattions that they might have, but I wasn't absolutely certain because of the shape of their records. And I told Mr. Carr that.

Q Was there an accountant, Winston--Erwin Winston--up there that you had a conversation with?

A Not me, no.

Q Did you subsequently meet with Miss Chan after Friday?

A I met with here down in our Enforcement Division's offices the following week.

Q Did you meet her on either Saturday or Sunday? Of that week?

A No.

Q Did you recall meeting her on a Monday, Tuesday or a Wednesday?

A Yes, one of those days, right. I forget which. Probably, Monday, but I'm not certain. The first or second day back in Washington, after the Boston trip, was the first time I talked to her about the Lloyd, Carr ledgers.

Q I'm giving you a calendar. Would that be either the 24th, 25th or 26th?

A Probably, yes. One of those days. I don't know which one.

Q But it definitely wasn't on the Sunday, the 23rd, is that correct?

A No, sir. No, it wasn't.

Q You recall testifying before about two telephone calls on January 27th?

A Yes.

Q Isn't it a fact that on Monday or Tuesday of that week you had a telephone conversation with Jim CArr?

A I'd have to look at my telephone log. Possibly, I did. I think Jim was on the phone practically every other day at just about that period of time.

Q Didn't you make a number of requests on that Thursday and Friday before for additional information from Lloyd, Carr?

MR. LEVIE: Which Thursday and Friday is he talking about, Your Honor?

JUDGE PAINTER: Could you give the date of the month, Mr. Hecht?

MR. HECHT: The 19th, 20th or 21st of January, 1977?

THE WITNESS: Me? Personally?

MR. HECHT: Yes.

THE WITNESS: I dont recall. I might have. I'd have to look at my telephone log .

Q (By Mr.Hecht) Did you discuss the situation with respect to the bank account of Lloyd, Carr and Co.?

MR. LEVIE: Wait a minute. I think the record is going to be unclear. Did he discuss with whom and when?

MR. HECHT: First, I'll ask, did he discuss it; then I'll ask, with whom and when?

JUDGE PAINTER: Thank you, Mr. Hecht.

THE WITNESS: The "when", I can't help him with.

Q (By Mr. Hecht) With whom?

A All my discussions, other than that one discussion with you, was with James Carr. I did at one time mention the fact that bank accounts, as our auditors found, were in the names of two different banks. I'm sorry, in the names of two different companies, Lloyd,Carr Financial Company and Lloyd, Carr and Company.

Q But you were aware that it was held out as Lloyd, Carr and Company, as to the general public?

A I was not aware of that at the time. I know that James Carr subsequently said that.

Q Didn't your people review the Greenwich bank account?

A I can't specifically answer that. I really don't know.

Q Do you reemember that there was a disagreement of about $110,000 because you were disallowing $110,000, because the Greenwich bank account said "Lloyd, Carr and Company"--speal]ed out, rather than "Lloyd, Carr and Co."?

A No, I don't recall that. All I remember is there was a difference between the Lloyd, Carr Financial Company title and the Lloyd, Carr and Company.

Q Was it your suggestion that they amend their filing to come in as Lloyd, Carr and Co., because that's how they held them out to the public?

A I just said that these assets apparently belong to two separate companies and--I was cautious, as I recall--because their bank statements appeared with two different names. That's all I recall.

Q Did you state that you felt it would be a good idea to unify this all together in one application, or in fact was the original application?

A I might have. I don't specifically recall saying that. It would be reasonable to assume that I might have.

Q Do you recall speaking with Mr. Carr and asking to come back again for an audit around the 25th of January?

A Yes, I think I said that.

Q Isn't it a fact that Mr. Carr stated to you, "But your staff has already advised me--?"

A Among other things, he did state that.

Q And you wouldn't state to him the reason at that time?

A I told him the reason.

Q What was the reason?

A I told him the records, according to our auditor, and I didn't review anything but one of her work papers myself--I was personally too busy--but from what I heard, the records were just too vague. They did not fit within the regulation 118, which calls for an applicant, after filing for an application, to keep systematic and current records.

Q And doesn't that relate to the month ending after they filed?

A No. That's the (b) part of 118. The (a) part of 118 is talking about current, daily records. The (b) part is just month-end stuff.

Q They gave you their month-ending figures for--

A December 31st, the first audit.

Q In fact, are you aware that the Staff has subpoened those particular figures? For this hearing, today?

A No.

Q But the Staff did have access to that year-ending trial balance?

A Well, after quite a bit of pulling together and building up records.

Q What are the reporting requirements of a CTA?

A Nothing. Well, the only thing they have charge of right now is the subscription fees. I don't fathom we'll ever have financial reporting requirements for CTA's.

Q Were you aware when Lloyd, Carr was formed?

A No.

Q If I told you in the summer of 1976, would you believe that?

A I would have to accept that.

Q Isn't it normally true that a company that was a CTA would not normally have an audited statement until the end of its first fiscal year?

A Well, Lloyd, Carr's company was a little more than just an advisory service, so I would think any going business would have a--current records, plus monthly records. I would think.

Q But the brokerage industry requires some very detailed records, don't they?

A Yes.

Q And in particular, these FCM requirements are extremely detailed, aren't they?

A Yes, they are.

Q Isn't one of the problems that the financial requirements which are being imposed, at least as of this date, commodity option dealers were originally designed for futures commission merchants?

MR. LEVIE: We're dealing with the facts here, Your Honor, not with his opinions or impressions. I object.

JUDGE PAINTER: I'm inclined to sustain your objection, but I want to give Mr. Hecht as much room as we can. It's getting close to the hour of 5:00 p.m.

THE WITNESS: Can I have the question again?

MR. HECHT: Can the Reporter read back the question?

JUDGE PAINTER: Off the record.

(Read back)

JUDGE PAINTER: On the record.

THE WITNESS: Basically, yes, but the$50,000 minimum is one exception to that, of course.

Q (By Mr. Hecht) But isn't it a fact that you were well aware on Friday that even taking off the over $100,000 in the Greenwich account, Lloyd, Carr more than doubly satisfied the net capital requirements?

A I personally was not aware of that. I had not reviewed the audit, nor have I yet. All I've done is review a couple of work papers, and discuss it with Mr. McCarthy and Miss Chan.

Q And weren't you told that they did?

A Not a clear-cut, yes. It was a qualified reply.

Q Well, this was after taking off all such things as the $110,000 in Greenwich, where it was "Company", instead of "Co."? "Company" was spelled out?

A I don't recall the--whether the "Company" was spelled out or just "Co.". I myself would not have made a point of that. I think the tie up here was the tie-up between the two companies, Lloyd, Carr Financial and Lloyd, Carr and Company. That's how it was explained to me. Now, what we were not satisfied with were the lack--was the lack of indication of liabilities to this company. We didn't have that. And because of the nature of their records, and because our auditors had to Lloyd, Carr's CPA or accountant to build up their records. It was a very unusual procedure. We rarely do that. I wasn't so sure that we had a company in good financial condition.

MR. LEVIE: Your Honor, at this point, I would interpose an objection to any further examination into the financial situation of Lloyd, Carr. I would call the courts' attention to Rule 10.67(a) of the Rules of Practice, which are applicable to these expedited proceedings. They are very clear that irrelevant evidence "shall be excluded." The complaint is very clear. Lloyd, Carr, the Applicant, is not being charge with failing to meet the minimum financial requirements. Whether you call that an affirmative defense or any other type of reason that could be proper for that, it's not relevant to the question of whether or not they are fit, because they are not charged with that.

JUDGE PAINTER: I'm aware of that, Mr. Levie, but I do think that may well have had something to do with their not being registered back on the 17th. I believe that was the time the letter went out--

THE WITNESS: We jsut received their application, as I understand it, on the 17th. We had no time at all to do an audit.

A That's right.

Q And, to your knowledge, did the Staff obtain every piece of information that they wanted to, and were free to copy anything they wanted to in the company's facilities?

A I don't have knowledge of that--that that condition existed.

Q Did you ever discuss that with Miss Chan, whether or not Lloyd, Carr was cooperating with your staff?

A Yes. She said they appeared to be cooperative.

JUDGE PAINTER: Mr. Hecht, I'm going to ask for a short recess, unless you've got less than five minutes?

MR. HECHT: I've got less than five minutes, Your Honor.

Q (By Mr. Hecht) Isn't it a fact that, as of the date of this hearing, neither orally or in writing, no one from either the Washington or New York office of your division has ever advised Lloyd, CArr and Co. of what deficiencies, if any, are in the record-keeping requirements, subsequent to January 20th?

A I'm sure Miss Chan did. As far as the lack of adequate and systematic records.

Q Have you ever seen a copy of such a letter?

A I don't recall. A letter? Oh, your reference is to a formal advisory, other than a head-to-head?

Q A head-to-head, let's say, besides the 19th and 20th

JUDGE PAINTER: But I believe it was rejected at least, in part, due to the fact that they included Lloyd, Carr and Company assets as a part of the assets of Lloyd, Carr Financial, is that correct?

THE WITNESS: I don'' believe we knew that until our auditors got in and started doing auditing.

JUDGE PAINTER: I'll overrule the objection, Mr. Hecht.

MR. HECHT: Thank you, Your Honor.

Q (By Mr. Hecht) When you discussed this with Mr. Carr, did Mr. Carr specifically ask you what specific concerns did your department have with the Lloyd, Carr complex-- that's on January 25th?

A I don't recall that specific question.

Q Isn't it a fact that you had advised Mr. Carr, or intimated to Mr. Carr that it really wasn't you who wanted to come back up here an audit, but it was the Division of Enforcement?

A I think that was Mr. Carr's assumption.

Q Did he question you specifically and ask you, did the audit people have a legitimate concern to come up there, because their purpose is at the Commission?

A I believe he did. And I referred him to 118(a), which is a legitmate concern.

Q But didn't he point out to you that your Staff had been up there the previous week?

when she was there?

A The 20th and 21st, I believe.

Q That's right. And there were some discussions on the Monday and Tuesday, which would be the 24th and 25th, I believe, weren't there?

A With me and Mr. Carr?

Q Yes, and Miss Chan, relating to the financial state-- the financials of Lloyd, Carr?

A The 24th and 25th were a Monday and Tuesday, is that right?

Q Right--

A I would say, yes, probably.

Q Didn't, in fact, Jim Carr send an employee down there about five time, like a currier service, furnishing things to your auditors?

A I don't know how often. He did send curriers at least twice.

Q And whatever you requested would you say was furnished to you promptly?

A I couldn't answer that. The New York office would have to.

Q Did he send the curriers down to Washington or New York?

A New York, as I recall.

Q Did you verify with New York that the people had arrived and the information had arrived?

A Probably. There was so much going on at the time. As I said before, we had about 20 to 24 other option dealers we were dealing with.

Q Do you recall any subsequent conversations where the Division of Enforcement was offered at random 15 customers?

A Yes, I recall that. I don't recall the number. It was a small number.

Q And the arrangement was that the customer cards would be turned over, face down, on the table--

A I recall that.

Q And they could pick out 15 cards?

A Yes.

Q And they could photostat them, and that they were free to call the customers?

A Yes. I don't know about the photostating, but,yes, free to call the customers.

Q And we said that if, in fact, Lloyd, Carr is misdealing or mishandling with his customers in any way, we felt this was a fair solution?

A I recall you saying something to that effect.

Q In your experience in 20 years of the commodity business, what is your--to your knowledge, what happens to a company when a number of its customers are called by the Division of Enforcement? Does it have an adverse effect?

MR. LEVIE: Objection. It calls for an opinion. He's not been proffered as an expert witness, and there's been no testimony that his prior background has had anything to do with the area Mr. Hecht is questioning him about.

JUDGE PAINTER: If he has an opinion, I wouldn't mind hearing it.

MR. HECHT: To his knowledge. He's been in the business for 20 years--

JUDGE PAINTER: Answer the question, Mr. O'Brien.

THE WITNESS: Well, customers are strange animals. Some will--some, it'll have a negative effect on; but I would say, by and large, probably the majority would stay with the company. But they would probably lose some.

Q (By Mr. Hecht) Wouldn't this depend on the nature of the questions asked by the Division of Enforcement?

A Or anybody. Even if we send out audit confirmations, sometimes we get negative effects. "Why are you asking these questions?" Things like that.

Q So it's been your experience that when people receive these calls, that the company would lose, let's say, out of 15, there's a substantial likelihood that they would probably lose at least five customers?

MR. LEVIE: Objection, Your Honor.

JUDGE PAINTER: That's pretty speculative, Mr. Hecht.

Q (By Mr. Hecht) One last question. Has your--isn't it a fact that your audit division, other with respect to

Lloyd, Carr, has never been asked to go up and obtain customer data for the purpose of the Division of Enforcment? In your 20 years?

A No. We've worked closely--in the CEA, we used to have a Compliance Division, and, of course, we have the Enforcement Division. We do work closely with Enforcement if it does call for auditing procedures. But, routinely, that's only a small percentage of our efforts.

JUDGE PAINTER: After you get through with the next question, Mr. Hecht, we'll be taking a break.

Q (By Mr. Hecht) Isn't that a situation where there's a publicly announced investigation, the party knows it's under investigation?

A No.

Q Under the CEA?

A No.

JUDGE PAINTER: Okay, off the record.

(A short recess was taken.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Hecht) Isn't it a fact that, since you've been employed by the Commodity Futures Trading Commission, that this is the only time you have been asked to perform a "audit" that was not really an audit in connection with the CTAs--

A The intention was to go up and do an audit, a complete financial audit again, hoping to find systematic and current records. And also to look into any side issues as to Carr's current operations.

Q Okay.

And you said again when you answered that question. So what you meant was that when they were up here the 20th and 21st, that was a thorough audit?

A No, I didn't say that. By no manner or means will I ever say that was a thorough audit. I don't think that was a thorough audit. Because-- I'm not blaming the auditor. It's the shape of the records, there's no way you can do a thorough audit.

Q In that kind of situation, this was a new regulation, wasn't it? As to this company?

MR. LEVIE: Which regulation, Your Honor?

MR. HECHT: The ones that were proposed that require these particular requirements.

JUDGE PAINTER: I think we've heard testimony on this already. We're getting a little redundant. He said that any going business should have certain records.

Now, we're ready for cross. I mean redirect.

REDIRECT EXAMINATION

Q (By Mr. Levie) Mr. O'Brien, directing your attention back to the conversation with Mr. Hecht on January 27, is it not correct that Mr. Hecht stated that he would not permit inspection of all Lloyd Carr's books and records until Lloyd Carr was registered?

A That's right, he did.

MR. LEVIE: No further questions.

RECROSS EXAMINATION

Q (By Mr. Hecht) Do you recall , during that particular conversation that Mr. Levie just referred to, that we discussed the fact that Lloyd Carr -- based upon a suggestion of the audit staff -- had not executed orders in London since January 17, 1977?

A I'm a little vague on that. I recall you saying something like you instructed your client to do no further business. And Mr. Levie heard a little more than I did, on that statement because I was thinking off in left field somewhere about the audit problems.

Q Do you recall, during that conference, that this posed a problem to the customers who had their options, the underlying commodity move up in value since the 17th?

And it posed a real problem?

A I'm very vague on that. But vaguely I do remember something to that effect.

Q And do you recall, in substance, that to protect the customers, we thought those orders should be executed? That we held the money for eight days and it was creating a problem?

A I don't recall that specifically being said, but--

Q It sounds familiar?

A --I'm sure it was.

MR. HECHT: Thank you.

I have no further questions.

MR. LEVIE: Is Mr. O'Brien now free to--

JUDGE PAINTER: Mr. O'Brien is excused.

(The witness was excused.)

JUDGE PAINTER: For the record, we will reconvene tomorrow morning at 8:30, if the parties are obliging enough.

MR. LEVIE: Agreeable.

MR. HECHT: Your Honor, I am really beat. And I'd like to work on some things tonight in connection with what's down in the second circuit. And work on another thing with respect to the subpoena, to get together certain records because there's just a huge job photostating them.

JUDGE PAINTER: I'll set it at 9:00, and no later.

And the reason is that this is making my day very, very short tomorrow because of the stipulation that you entered into with Judge Tauro. It means I've got to cool my heels up here all tomorrow afernoon for a little short three or four hour hearing.

MR. HECHT: I've forgotten about it, Your Honor. I got so involved in the hearing today, I'd forgotten about the obligation tomorrow.

JUDGE PAINTER: Is that obligation for sure?

MR. HECHT: Oh, it's definitely set.

JUDGE PAINTER: And what is the purpose of that?

MR. HECHT: It's oral argument of a case before the appellate division, first department, State of New York. And they're fixed appeal dates, and briefs have been filed. And there are no adjournments, and the other party will not adjourn.

I'll tell you what. Since it's a 2;00 plane, which means I should catch-- I just hate to be late. Lets start at 8:30 on the condition that I can leave here in time to try to get a plane that gets me into LaGuardia by 1:00--

JUDGE PAINTER: So, 8:30 to 12:30.

ME. HECHT: Well, 12:30, Your Honor, the earliest plane I could catch is 1:00 and that doesn't get me into LaGuardia until 2:00. And I've got to be in court at 2:00.

That's what I'm saying. 8:30, I'll come in. I understand the problem. But I think anyone who knows travelling to New York, that you should leave--

JUDGE PAINTER: Well, we'll accomodate you.

Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

MR. LEVIE: Is it my understanding that Mr. Carr will be here tomorrow morning to testify?

MR. HECHT: Yes, he will. But first, this gentleman's been waiting around all day.

MR. LEVIE: Is that Mr. Garvanne?

MR. HECHT: Garvanne.

MR. LEVIE: He will be the first witness. And then I will move directly to Mr. Carr.

MR. HECHT: Mr. Carr, now, I know what time he normally gets in. If we're going at 8:30, I can have him available by 9:30. But I would say, if you have another witness, bring him in. Because I know it's better to have him by 10:00.

MR. LEVIE: If we go with Mr. Garvanne at 8:30, I can probably wind him up by 9:00 at the latest.

JUDGE PAINTER: If you get Mr. Carr in here by 9:30, there's no problems.

Off the record.

(Whereupon, at 5:20 p.m., the hearing was adjourned, to reconvene at 8:30 a.m., Thursday, March 10, 1977, in the same place.)

COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

JAMES A. CARR, and CHARLES P. LE MIEUX III
d/b/a LLOYD, CARR & CO., A PARTNERSHIP,
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL CO.
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

JAMES A. CARR

CHARLES P. LE MIEUX III

Respondents

No. 77-6

John McCormack Post Office and
Federal Building
Room 932
Post Office Square
Boston, Massachusetts

Thursday, March 10, 1977

The above-entitled matter came on for further hearing, pursuant to Adjournment, at 8:30 a.m.

BEFORE:

Honorable GEORGE H. PAINTER, Administrative Law Judge

APPEARANCES:

RICHARD LEVIE, Esq.
and
MICHAEL STEWART, Esq.
and
ELLEN MELTZER, Esq.

Commodity Futures Trading Commission, 2033 K. Street, NW, Washington, D.C. 20851 appearing on behalf of the Commission

APPEARANCES (Continued):

CHARLES HECHT, Esq. and HAIG COSTIKYAN, Esq.	Law firm of Charles Hecht, 60 East 32nd Street, New York, New York 10017; appearing on behalf of the Respondents
G. LAMAR CRITTENDEN, Esq.	Law firm of Barrett & Lamont, 65 William Street, Wellesley, Massachusetts 02181; appearin on behalf of the Respondents

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PROCEEDINGS

8:40 a.m.

JUDGE PAINTER: On the record.

Who's our first witness this morning?

MR. LEVIE: Mr. Garvanne.

Whereupon,

ERIC R. GARVANNE

was called as a witness by and on behalf of the Commission and, having first been duly sworn, was examined and testified as follows:

JUDGE PAINTER: Be seated.

DIRECT EXAMINATION

Q (By Mr. Levie) Mr. Garvanne, would you please state your full name for the record, and spell your last name?

A My full name is Eric Raynard Garvanne, G-a-r-v-a-n-n-e.

Q You are employed by Lloyd Carr and Company here in Boston?

A Right.

Q Are you employed there as an account executive?

A Right.

Q And in your capacity as an account executive, is it your duty to solicit orders for commodity option purchases on behalf of Lloyd Carr and Company?

A Right.

Q How long have you been employed by Lloyd Carr and

Company?

A Since February 1.

Q Of what year?

A 1977.

Q In contacting customers on behalf of Lloyd Carr, have you sold any commodity options?

A Yes.

Q How many?

A To date, about three.

Q When you-- when those orders have been placed, have you discussed the purchase of those orders with James Carr?

A I don't understand exactly what you mean.

Q There are certain forms that are filled out when an option order is placed. Correct?

A Right.

Q When the order is placed, did you have any contact with James Carr regarding the form that was used to-- that had to be filled out with respect to that order?

A Do you mean, did he and I discuss making up the form?

Q Did you show him the form, after they were filled out when the order was placed?

MR. HECHT: Objection to the relevancy, Your Honor.

JUDGE PAINTER: Overruled.

And you may answer the question, if you can.

THE WITNESS: When an order is placed, the branch manager always since I've been there speaks with the client. The forms are filled out, usually by him. That is, the final form. Okay.

Now, they have to -- to my understanding -- be approved by Mr. Carr. That's my understanding of the procedure.

Q (By Mr. Levie) Does Mr. Carr, in the course of approving them, put his initials or his signature on any document?

MR. HECHT: Objection to the form of the question. He said what his understanding was. You're restating it as a conclusion of law.

JUDGE PAINTER: Let's hear the question again, Mr. Levie.

Q (By Mr. Levie) Mr. Garvanne, it's your understanding -- if I heard your testimony correctly -- that Mr. Carr authorizes or has some role in the acceptance of initial orders, in the placement of initial orders for commodity option purchases?

A Yes.

Q What is your understanding of his function?

A Well, our clients have to be approved before their order can be accepted.

Q Who has the authority to approve those clients?

A At my level, it's always given to the branch manager.

Q What is your understanding of Mr. Carr's authority to approve those applications?

A Oh, well, he could negate it entirely. My opinion-- my impression is that he delegates part of his authority to the branch manager. That's the way it seems to be run, at least.

Q In your experience at Lloyd Carr, have you personally had occasion to discuss with James Carr the authorization of any orders that you have placed?

A No.

Q When a customer sends in money, that is marked on a form. Correct? That the money's been received?

A Marked on a form? I've never seen a form that-- to that effect.

Q Are you informed when a customer's money comes into the firm?

A Yes.

Q By whom?

A Well, it depends on how it comes in. In my cases, it's always been by wire. And it's always been the branch manager.

Q And have you had any role with respect to the receipt of the money once it has been wired in, in your cases? Have you had anything further to do in the placing of that option order?

A No.

Q To your knowledge, what is James Carr's role -- if any -- with respect to the receipt of money for the purchase of commodity options?

A I'm not aware.

Q Did James Carr have any role in your training?

A Yes.

Q What was his role?

A Well, part of the training program, particularly in the first week, was classes. And during the classes, I'd say on a number of occasions, he spoke to us about the nature of trading in this market. He spoke to us about how did the company function. And he spoke to us about the markets in general.

Q Since February 1 to the present, have you had occasion to discuss with James Carr the business of selling commodity options?

MR. HECHT: Objection to the question. It's overbroad.

JUDGE PAINTER: Let's hear the question again, Mr. Levie.

Q (By Mr. Levie) The question was, since February 1, have you had the occasion to discuss with James Carr I think it was the commodity option business?

A Have I? Certainly.

Q And have you gone to Mr. Carr for advice in sale techniques?

A Yes.

Q Have you gone to Mr. James Carr for any advice or any problems you've had with particular customers?

A Oh, yes.

Q Has he offerred you advice and assistance in that regard?

A Frequently.

Q And has he talked to your customers to assist you in that regard?

A Not to date.

Q Do you know Charles LeMieux III?

A No, I don't.

Q Have you filed an application for registration with the Commodity Futures Trading Commission as an associated person?

A Yes.

Q When?

A February 1, 1977.

Q What did you do with that application?

A The application was completed, and it was handed in to Tom Labus.

Q Upon whose instructions did you execute that application?

A Now, I don't understand that. You mean--

Q Who told you to fill it out?

A Oh. Tom Labus.

Q Did he tell you why?

A Yes.

Q What did he tell you?

A He said that that was a requirement for trading in this market.

Q And did he tell you whether or not you had to be approved as an associated person before you could do business in this field?

A I'm not sure exactly how he explained it, but that it was necessary.

Q And what's your best recollection as to what, if anything, Mr. Labus said with regard to whether you had to be approved before you could start selling commodity options?

A I'm not sure.

Q Have you heard to date whether your application has been-- application for registration as an associated person has been approved?

A No, I haven't.

Q From February 1 until March 8 of this year, approximately how many persons have you contacted in an attempt to solicit orders for commodity option purchases on behalf of Lloyd Carr and Company?

A I'd say I average between 60 and 100 a day from, oh, after the first two weeks. So that is, say, from the 14th or the 15th, whichever day would be a Monday till yesterday which was very slow for me because I was here. So I'd have to say I don't know. Multiply that out. Oh, 1000, 2000.

Q How many days a week do you work?

A Five.

Q I believe you said earlier that you sold three options?

A That's right.

Q How much total dollars were the customers required to send in to pay for those three options?

A I believe about $14,000 total.

Q And you are paid commissions after the money is received by the firm. Is that correct?

A Right.

Q Does someone notify you that the money has been received?

A Yes.

Q Who is that?

A It's usually the branch manager. In my case, it's always been the branch manager.

Q And has that been Mr. Labus?

A No. That's been Bob Zolla.

Q Would you spell the last name for the record?

A Z-o-l-l-a.

Q Have you received commissions for the sales of your three options?

A Yes.

Q What were those commissions? The amount?

A $1400 and some odd dollars.

Q From February 1 until the present, have you had occasion to learn that Lloyd Carr and Company was not registered as a futures commission merchant with the Commission?

A I am aware of discussion on that issue. But it's really not clear exactly what the status of the issue is.

Q Have you ever heard James Carr discuss the status of Lloyd Carr and Company's FCM application?

A Yes.

Q What have you heard Mr. Carr say?

A That the situation was under appeal.

Q Did he explain in any more detail what the situation was?

A We've been having a lot of trouble getting registered. Applications have been coming back. In fact, I had to file the application a second time, this time with a check from the firm. An individual money order was sent out. We have been having problems there.

Q What was the problem with your first application that it was returned?

A I don't know. In fact, I'm curious.

Q Is it your testimony that there was no cover letter accompanying the return?

A No, there wasn't. In fact, February 1 we filled out the forms. To my understanding, they were sent out at least two days later.

About a week ago, the form was there again, and it had to be sent out with a money order.

Q Who paid for it the first time?

A The firm.

Q And how did you come to know that the form was sent out a day or two after you filled it out?

A Because it was important for us to bring it back the next day. That's what we were told.

Q How did you come to find out that the form was mailed off to the Commission--

A I'm not sure that it was actually mailed off. I didn't see anyone mail it.

Q Were you ever told it was mailed?

A I was told that our applications were sent in.

Q Did you have your application returned to you? Is that your testimony?

A It was brought to my desk.

Q Was it in an envelope?

A No, I don't think so.

Q So someone obviously had opened the package, or whatever form it came in, before it came to your desk. Right?

MR. HECHT: Objection to--

JUDGE PAINTER: Overruled.

THE WITNESS: I guess so, yes.

Q (By Mr. Levie) So you would have no way of knowing whether or not there was a cover letter with it?

MR. HECHT: Your Honor, objection. A, it's irrelevant. B, he's badgering the witness. And C, I think at this stage I'd like to make a motion for the staff to produce a list of all AP applications filed with the Commission by person and company since November 15, 1976 through February 4. I think it will conclusively show--

JUDGE PAINTER: Mr. Hecht, I'll take your motion under advisement. Let's proceed with hearing this witness testify.

Q (By Mr. Levie) I believe the question, Mr. Garvanne, was, you have no way of knowing whether or not there was a cover letter that accompanied the return of your application. Correct?

A Of my individual application?

Q Yes.

A Right.

Q Were you ever told by anyone at Lloyd Carr and Company to continue soliciting option orders and not to worry about whether you or the firm was registered?

A Well, it was considered that it was important that you be registered.

Q By whom was it considered important?

A By Mr. Carr.

Q How was that communicated to you?

A Because that, for one thing, we discussed the situation, just what our problems were. How to-- the whole legal procedure was important, what we were going through. That it was important that the situation be resolved.

Q When you said, Mr. Garvanne, that we discussed, who is the we?

A Oh, well, he would discuss the situation with the entire group of account executives.

Q He being James Carr?

A Right.

Q And in the course of those discussions, Mr. Carr explained to you the importance of being registered or the necessity of being registered?

A Uh-huh, right.

Q And did he also say anything as to whether or not sales or solicitations for option orders should continue even though registration of the firm had not been achieved yet?

A Could you repeat that again? I want to be clear on what you're saying.

Q Did James Carr-- let me rephrase the question.

Did you ever hear James Carr tell you or other account executives in your presence that they should continue soliciting commodity option-- orders for commodity option purchases--

A Did I ever hear that? Yes.

Q No. I hadn't finished the question yet.

A Oh, go ahead.

Q During your employ at Lloyd Carr, did you ever hear James Carr tell account executives that they should continue to solicit orders for commodity option purchases and not worry about whether or not the firm was registered as an FCM?

A I'm not sure because the difference between the FCM and the CTA, I'm not sure which-- exactly which phrase he may have used.

Q Do you have a best recollection at this time?

A No, I'm not sure because whether he said to be registered as a CTA or registered as an FCM, I'm not sure. Just not sure.

Q But he never said that account executives should stop selling until the firm is registered. Correct?

A He never said that we should stop selling options.

Q Did anyone else at Lloyd Carr and Company ever say, in your presence, that account executives should continue soliciting orders for commodity option purchases without worrying about whether or not the firm was registered as an FCM?

A Well, one thing I would say is this. And that is that, for us as account executives, for us to worry about it would serve no purpose.

Q Did--

JUDGE PAINTER: Mr. Levie, I think you covered that point. Can't you move on?

MR. LEVIE: Your Honor, if I might, I have just two questions additional in this area. Since I would respectfully submit that that answer was not responsive to my question.

Q (By Mr. Levie) I believe the question was, did you hear anyone else at Lloyd Carr and Company tell account executives to continue soliciting orders for commodity option purchases without worrying about whether the firm was registered as an FCM?

A Hear-- did I hear anyone else say that?

Q Yes.

A Yes.

Q Did you ever hear that said in James Carr's presence?

A I'm not sure.

Q Did anyone at Lloyd Carr and Company ever tell you to continue soliciting orders for commodity option purchases without worrying about whether you were registered as an associated person?

MR. HECHT: Objection. I didn't understand the question. Could you read that back?

JUDGE PAINTER: Just restate the question, Mr. Levie.

Q (By Mr. Levie) Did anyone at Lloyd Carr and Company ever tell you, Mr. Garvanne, to continue soliciting orders for commodity option purchases without worrying about whether or not you were registered as an associated person with the Commission?

A I'm not sure.

Q But since-- you have known from February 1 until the present time that you have not been registered as an associated person. Correct?

A I didn't know what happened to my application.

Q But you never received any indication that your application had been approved. Correct?

A That's correct.

Q And--

A Nor rejected.

MR. LEVIE: That's all I have, Your Honor.

JUDGE PAINTER: Thank you.

Cross.

MR. HECHT: Yes.

Your Honor, at this time, I'd like to make a motion for the staff to produce the following data, which should be easily available. They should furnish to me a list of all AP applications filed with the Commission since November 24, 1977 (sic), the name of the company and the nature of the disposition. I feel that this is definitely relevant to Lloyd Carr and Co. because it's obvious -- and everyone knows -- that the staff has arbitrarily not processed one person's associated person application who has been associated with Lloyd Carr and Co. And to me, if there was ever outright discrimination, this is it. And that documentary evidence will show it beyond any doubt.

JUDGE PAINTER: Let me point out something to you, Mr. Hecht. You're talking about a large number of documents, I assume. Is that true, Mr. Levie?

MR. LEVIE: In excess of 25,000, Your Honor.

JUDGE PAINTER: Now, what I would like to point out, Mr. Hecht, is that if there's a cop out here in a car and he sees one car-- he stops one car out of 100 that are exceeding the speed limit, that is no cause to complain. He will pay his ticket. If you're doing 80 miles in a 55 mile zone, and there are 500 cars going by there and the cop has only an opportunity to stop one, that man has no cause to complain. He will pay his ticket.

Now, in this particular instance, you're claiming that Lloyd Carr was singled out. Perhaps you have some evidence of that. But I will not order the Commission to produce 1000's and 1000's of records for you in this particular case because you believe your client-- a different standard was applied to your clients than to another party.

If you want to produce some published policy statement of the Commission that requires that a double standard be applied, I would be happy to order that that be produced.

MR. HECHT: Your Honor, you misunderstood my motion. I don't want the applications. I want, and you have a list and it's all on computer, of every AP application filed, and the name of the person. It's a simple matter to go through-- and the name of the company.

It's a simple matter to go through and check, and note the disposition. And--

JUDGE PAINTER: I will deny your motion, Mr. Hecht, but I will grant you an opportunity to file an interlocutory appeal on this specific motion. Should you so move me, I will grant you the right to file an interlocutory appeal on this motion.

MR. HECHT: Thank you very much, Your Honor. I should point out just one thing, and I think it's something the staff should consider. I'm not saying that the man who drove the car shouldn't be singled out. I'm saying that anyone who lives in his neighborhood, who was not driving the car, should not be singled out because they happen to be friends or working for that particular man. That's a big difference.

JUDGE PAINTER: The law should be applied fairly--

MR. HECHT: That's right.

MR. LEVIE: May I?

JUDGE PAINTER: Mr. Levie?

MR. LEVIE: I think it's important that I put several comments on the record in this regard, Your Honor.

Your Honor, obviously Mr. Hecht is seeking to make a case for selective prosecution. The law is very clear that he is not-- that the standards for even proposing this type of motion, especially at this late date -- I could provide the Court with appropriate case citations to that point this morning if the Court wishes. But more importantly, Your Honor, from the time these regulations -- which require persons selling options to register as associated persons -- have been published, which was back at least to October of 1976, it was clear in a Federal Register notices. People were told at least in October and November that the processing takes 30 to 60 days at a minimum.

None ofthe applications for Lloyd Carr account executives were filed with the Commission until January 20, 1977. They were filed in the wrong place in New York. There are, I will conceed, several Lloyd Carr account executives who had pre-existing AP status. I know of Mr. Lahus. I know of Mr. LeMieux III. And we heard about Mr. Levine yesterday.

But with respect to all the other account executives, my knowledge is the applications were not filed until January 20. Given the fact that the industry was on notice that the processing would take at least 30 to 60 days, Lloyd Carr and Company has no grounds to complain at this late date, Your Honor.

JUDGE PAINTER: Two minutes for short rebuttal here.

MR. HECHT: Just very quickly, the argument was categorically rejected right from the bench by the second circuit court of appeals that that's not proper notice. The rules speak for itself, and that's it. And you go on the rules. It's either valid or not.

JUDGE PAINTER: All right.

Now, let's proceed with the cross of Mr. Garvanne.

CROSS EXAMINATION

Q (By Mr. Hecht) Mr. Garvanne, you stated that you started with the company on February 1?

A Right.

Q And how long was that training session?

A About two weeks.

Q During the first week, were you permitted to make any telephone calls to customers?

A No. The first week was classes.

Q And how many hours a day was that?

A Oh, it was pretty much all day. From like 9:00 to lunch. And then about 1:00 to 4:00 or 5:00.

Q And during the second week--

A The second week, that's when we were on the phones, monitored phone calls. And we really got into the actual-- actually following the market. And actually contacting people.

Q And that took you through to the middle of February?

A Right.

Q So, in effect, you've only really been active with the company now for about three weeks selling, after your training program?

A Right. But we have-- particularly, like, in our class we have the morning sales meetings. And we also have on the floor the manager who is, like, right there. And if you ever have any problems, he's really available.

Q What happens during the morning sales meeting?

A Well, first thing that we do is we go over what happened in the markets as of yesterday, early this morning, particularly in the case of, like; very volitile markets. We go over those markets -- what does it mean?, what's been happening with the clients accounts?, strikes, and so forth.

And then we also go into what we intend to do for the day.

Q Now, in the training program, were you given any written materials in addition to the lectures?

A Yes.

Q Did you bring those with you?

A Right, I did. On the couch there.

Okay, those are four copies of each, I believe.

Q Would you take a look through here and see if you can identify if these are copies of the records that you have with respect to that training program?

A Yes.

MR. HECHT: Your Honor, at this time, I'd like this marked as Respondents' next exhibit.

MR. LEVIE: May I ask of the proffer, Your Honor?

MR. HECHT: The proffer goes to the same thing of, if in fact there is liability -- which we feel there isn't -- one of the considerations here is a cease and desist order. And that goes to whether or not it's in the public interest. And if, in fact, the company is well trained and conducts an ethical business, then there's no public interest to order a cease and desist order.

JUDGE PAINTER: This is similar to the material regarding-- to the material offered regarding Marilynn Shaffer?

MR. HECHT: It's similar, but not the same, because it's later on.

JUDGE PAINTER: The witness training material furnished the brokers at Lloyd and Carr. I'll reject the document, but you can make your proffer.

MR. HECHT: Thank you.

JUDGE PAINTER: Mark it for identification as R-7, I believe.

(The document above-referred to was marked Respondents' Exhibit No. 7, and was rejected.)

MR. HECHT: Your Honor, I have reviewed it and you will see it is slightly different than the others because it's been updated.

JUDGE PAINTER: But it is the same text--

MR. HECHT: Yes, it is.

JUDTE PAINTER: You understand it will go along with the bundle.

MR. HECHT: Yes.

JUDGE PAINTER: Would you say that consists of how many pages?

MR. HECHT: We'll collate it, but it consists of about 25 pages, which includes a description of options, of various charts, a description of how the equity is computed.

JUDGE PAINTER: It looks like there's about 100 pages there.

MR. HECHT: It is, but this is four copies collated. The Division is entitled to it.

Q (By Mr. Hecht) Eric, would you describe for the court your educational background?

A Harvard University, class of 75, BA in economics.

Q And, how did you become interested in commodity options?

A Before I started this, I was working as a consultant, and I didn't like that at all. I liked the work, but I didn't like grants, funding, that whole thing.

And, I'm very much interested in economic development, international trade and it seemed to be a good thing to do.

Q And studying economics at Harvard, did you take any courses relating to agricultural economics or things like that?

A Not too much. We passed it tangently in some courses.

Q What was your area that you specialized in at Harvard?

A Well, most of the work I did was in health care delivery systems and also some work in economic development. And that was where we mainly passed the agricultural area, but it was public finance basically.

Q On direct testimony, you testified to certain meetings where Jim Carr discussed certain litigations. Do you recall that?

A Right.

Q Do you recall how many people were at those meetings?

A Forty, I guess.

Q In the whole office?

A Yes.

Q And did all activity stop when you had these meetings?

A Yes.

Q And do you recall any discussions about this particular case here, this administrative proceeding, in February when you started with the company?

A Not in February.

Q Do you recall subsequent discussions with respect to it?

A This hearing in particular?

Q This case, just the problems with the CFTC?

A Yes.

Q When did you first hear about the problem?

A About the third or fourth day with the firm.

Q And what was explained to you?

A That to be registered, that our applications were being held up and that we had had a case with the CFTC on the double segregation, which we were successful with and we were allowed to -- in fact, this was something that it was important to send out to our clients-- to send them the Reuters on the customer segregated account that Lloyd Carr has established and that the firm felt very badly how the CFTC responded to that segregated account.

Q Is this an account that is set up that when the customer's money comes in, for an option, it is kept in a special account until the option is actually struck?

A Exactly.

Q And if the option isn't struck according to the customer's order, then the money is sent back to the customer?

A If he desires so.

Q And were people at those meetings free to ask questions of Mr. Carr?

A Always.

Q Did they ask questions?

A Yes.

Q And is it a fair statement to say that Mr. Carr was available to answer such questions?

A Yes.

Q Did you ever ask him any questions on the litigations?

A Yes.

Q Did he always answer your questions?

A Yes.

Q Do you like working for Lloyd Carr?

A Yes.

Q Would you like to continue working for Lloyd Carr?

A Sure.

Q Do you like doing what you're doing?

A Yes.

MR. HECHT: I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. Levie) Mr. Garvanne, you started on February first, which is a Tuesday, correct?

A Well, then it must have been that Monday.

Q Of that week?

A I'm almost certain that the first was a Monday, but it you have a calendar, I may be wrong. Yeah, it must have been January 31, then.

Q Did you commence calling customers on Monday, the seventh of February?

A No, I forget exactly what date. We had some problems with the phones, we didn't have enough phones in the office, so for us to get on the phones was held up. Some people were able to get on the phones, I believe. But, I don't think I was able to get on the phones on the seventh.

Q Do you recall when that week you first started making telephone calls?

A I'm not sure what date, but it was one of the days that week.

Q Do you recall talking to Mrs. Joan Johnson of Sutton, Massachusetts, on or before February 7?

A Yes, somewhere around there.

Q And you spoke to her in an attempt to solicite a commodity option purchase from her?

A Right, I spoke with her and with her husband. And the branch manager also spoke with her and her husband.

Q Were you instructed to send Reuters information about Lloyd Carr's segregation account to customers that you spoke with on or about February 7, 1977?

A I'm not sure. There was a little blurb, I guess it would be called. A little sheet on it. And I'm not sure if we had it at that time.

Q If I understood your testimony on Cross Examination, you were told by somebody at Lloyd Carr that Lloyd Carr had been successful in its case against the double segregation requirements of the option rules, correct?

A Right.

Q Do you remember who told you that?

A I think Jim Carr mentioned that.

Q Do you remember the date?

A No, I'm not sure of the date.

Q Did he at that same meeting or some other time tell you that Lloyd Carr had been unsuccessful in its case against the registration requirements of the commodity option rules?

A I'm not sure.

Q Is the only thing you recall him saying with respect to Lloyd Carr's matters wiht the CFTC was that Lloyd Carr had been successful on the double segregation requirement?

A We had been successful on that. And there was another case that was thrown out of court. And I'm not sure which that was.

Q You recall neither Mr. Carr nor anyone else saying anything about Lloyd Carr's-- let me rephrase that.

You recall nothing being told to you by anyone at Lloyd Carr with respect to the registration requirements that had been challanged by Lloyd Carr and Company. Is that correct?

MR. HECHT: Objection to the form of the question, Your Honor. You're not asking for evidence of what was told. You're asking what wasn't. I could say that the sky was red today. Were you told that the sky wasn't red?

JUDGE PAINTER: Mr. Hecht, I think the point Mr. Levie is going to make is that this witness received word that Lloyd Carr had prevailed in a certain piece of litigation. And he just wants to know if they gave out the bad news as well. I think he's entitled.

See if you can get that answer in one more question. If you can't, let's move on.

Q (By Mr. Levie) Were you told anything with respect to the fact that Lloyd Carr and Company had been unsuccessful in its challange against the FCM registration requirements of the option--

MR. HECHT: Objection to the form of the question because, in fact, you know it's improper. The district court -- and that's one of the problems -- never considered the position of Lloyd Carr. And it was even conceeded by you in your brief and appeal that the lower court never even ruled on that issue.

JUDGE PAINTER: I don't think the question is too important for this proceeding, Mr. Levie.

I'll sustain the objection.

Q (By Mr. Levie) Mr. Garvanne, would you explain the nature of the-- what options are guaranteed, Mr. Garvanne?

A Are guaranteed?

Q Yes.

A There's no investment that's guaranteed.

Q Mr. Garvanne, there is a guarantee which extends to certain options issued out of London, England, correct?

A Not to my knowledge.

Q Is there a guarantee of any sort on the International Commodity Clearing House in London?

A Not that I know of.

Q Is there any guarantee of any sort--

JUDGE PAINTER: Mr. Levie, would you make it clear to the witness that you're not talking about a guaranteed investment. I think Mr. Garvanne is confusing the ques--

MR. LEVIE: All right, let me rephrase the question, Your Honor.

Q (By Mr. Levie) Mr. Garvanne, what -- if anything -- were you ever told about any form of guarantee extended by the International Commodity Clearing House?

MR. HECHT: Objection to the form of the question. I don't know what you mean by form of guarantee.

JUDGE PAINTER: Well, there is such a word involved in this matter. You just presented us, and I rejected it -- your training materials. So I can't refer back to that, Mr. Hecht. But let's see if the witness has heard anything about the word guarantee.

All right, Mr. Levie.

Can you answer his question?

THE WITNESS: To the best of my knowledge -- and I'm not sure that I understand the question -- one of the most important things for our clients would be if they decide to get out of this market, that they don't have to be afraid that they won't be able to exercise their option.

Q (By Mr. Levie) Why dont they have to have that fear?

A Because in order to trade on the international exchange there, that in order to get out, you have to have a grantor. And that the house itself would be the grantor.

Q So is the option in any way guaranteed by the ICCH to the person who purchases that option?

A I-- do you mean that-- well, if they purchase an option, do you mean that they have actually purchased an option? That's what I don't follow.

JUDGE PAINTER: Mr. Garvanne, you mentioned guarantor (sic). Maybe you can explain that again.

THE WITNESS: I mentioned a grantor.

MR. HECHT: Grantor is what he meant.

JUDGE PAINTER: All right.

Mr. Levie, you're going to have to put your question to him better. I don't believe the witness has the knowledge to respond.

THE WITNESS: If he would state it plainly what he was saying, it would be easier.

JUDGE PAINTER: It's been stated plainly, Mr. Garvanne.

Try again, Mr. Levie.

Q (by Mr. Levie) Mr. Garvanne, in whose name does Lloyd Carr and Company purchase options?

A In the name of our clients.

Q And is it purchased in London in the name of your clients?

A To my knowledge.

Q To your knowledge, yes or no?

A Yes.

Q And is there any sort of guarantee that is extended from the ICCH in London to the clients of Lloyd Carr?

A That they will honor the option. That the house will honor the option. That, if the client does decide to get out of the market, he or she or they will not have to worry that their-- that they won't be able to find a grantor for their option.

There's no guarantee that they'll receive a profit. But they won't be locked in the market.

Q And that is extended directly to the Lloyd Carr customer, to your understanding?

A Yes.

Q Does a similar situation exist on the London Metals Exchange?

A I'm not sure.

Q Have you sold options that were bought and sold on the London Metals Exchange?

A Yes.

Q And have you ever been taught whether there were any such guarantee or arrangement, that the purchaser will receive his money, exists on the LME?

A I'm--

Q Assuming a profitable option.

A If it's profitable, that he'll receive his funds.

Q And is that in any way guaranteed by the LME?

A I'm not sure.

Q Were you taught anything about whether or not the LME guaranteed its options, in your training at Lloyd Carr and Company?

A I remember going over the-- I remember we went over that. But I'm not sure because what was emphasized was the situation in coffee which is not traded on the London Metals Exchange. And that really stuck clearly in my mind, that in the case of coffee -- which was being, at that time, locked limit up -- that you wouldn't have to be afraid of not being able to get in or out of the market. And that the International Commodities Clearing House in London would honor the contract.

And I'm almost certain that it was mentioned in my notes. But I'm not sure of the London Metals Exchange.

Q Is it your testimony that there is an up and down limit in coffee sold on the ICCH?

A No, no. Only in New York. But some of our clients are not aware of the fact that we're talking about London, New York. And we have to be sure taht they are-- that that is clear to them. So that was one of the things--

JUDGE PAINTER: We're taking a lot of time here, Mr. Levie. Is there some other additional points you want to make here? On redirect?

MR. LEVIE: No, Your Honor.

JUDGE PAINTER: Mr. Hecht, Any more recross?

MR. HECHT: Just a couple of questions.

RECROSS EXAMINATION

Q (By Mr. Hecht) Eric, during the course of your instruction, were you explained how the option worked?

A Yes.

Q And do you know who covered that series of lectures for you?

A Tom Labus, and Jim Carr.

MR. HECHT: Thank you.

I have no further questions.

JUDGE PAINTER: Anything else?

MR. LEVIE: No.

JUDGE PAINTER: Fine.

You're excused, Mr. Garvanne.

(The witness was excused.)

JUDGE PAINTER: Mr. Hecht?

MR. HECHT: Mr. Carr should be right on over.

JUDGE PAINTER: Good.

MR. HECHT: Just a few minutes.

JUDGE PAINTER: A few minutes?

MR. HECHT: Yes, Your Honor.

JUDGE PAINTER: We can take a short recess now, and resume with him.

MR. HECHT: All right, Your Honor.

JUDGE PAINTER: All right.

Off the record.

(Short recess.)

JUDGE PAINTER: On the record.

Now, Mr. Levie?

MR. LEVIE: Your Honor, for the record I note that with respect to Your Honor's ruling before granting an interlocutory appeal.

One, under the Commission's Order of Expedited Procedure, with all due respect, Your Honor doesn't have the authority to grant that since those rules were suspended and waived.

And secondly, this is not the appropriate type of ruling -- this Court cannot make the appropriate finding which would comply with the rules under an interlocutory appeal.

MR. HECHT: Well, Mr. Levie, then I'm going to move at this time that all hearings be suspended. You're in violation of Judge Tauro's Order and your representations to Judge Tauro that the Judge could rule on all motions, and if you're going to do that I suggest we get Judge Tauro's ruling which is being typed up by Mr. Curry. It will be available on Monday. You can't have your cake and eat it too, and that's what you represented to a Federal Court in all motions.

JUDGE PAINTER: Mr. Hecht, please proceed. I have denied your motion, and I have granted to the extent possible your right to an interlocutory appeal.

MR. HECHT: I know that.

JUDGE PAINTER: So simply file your paper and Mr. Levie may file a motion -- a document in opposition to it if he cares to, but the ruling is made.

MR. HECHT: Okay, thank you Your Honor.

JUDGE PAINTER: I may require you to file that tomorrow -- prepare that appeal if you intend to file one some time this evening and get this in the mail to the Commission. Perhaps you can prepare this enroute to New York for your other business.

MR. HECHT: Your Honor, I have a little problem getting a secretary on the plane and typing it up.

JUDGE PAINTER: Well, I'm going to allow you to hand write your motion, Mr. Hecht. That's another violation of the rules so --

MR. HECHT: I'd rather do it typed and do it right and have the case --

JUDGE PAINTER: Do the best you can.

MR. HECHT: Okay.

We will try to have it filed in there by tomorrow, if possible. I'm just one man -- or two men, or three men. You know, there's just 24 hours in a day, Your Honor.

JUDGE PAINTER: Mr. Levie?

MR. LEVIE: Your Honor, may I request that I be served with a copy of that tomorrow here in Boston?

JUDGE PAINTER: Yes, Mr. Levie.

MR. LEVIE: Assuming it's filed tomorrow.

At least I be served wherever I am when it's filed.

JUDGE PAINTER: Sometime before we recess the hearing tomorrow you will be served with a copy of any motion that Mr. Hecht elects to file, or the appeal.

MR. HECHT: The attorneys will be personally served. I have in the past and you'll get the same thing in the future.

JUDGE PAINTER: All right.

Let's proceed.

MR. LEVIE: May the Witness be sworn, please?

James Carr.

Whereupon,

JAMES CARR

was called as a witness and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Levie) Mr. Carr, will you state your full name for the record, please?

A James A. Carr.

Q And your address, sir?

A Seventy Eight D Street, Hull, Massachusetts.

Q Mr. Carr, what is your present employment or occupation?

A I'm president of Lloyd, Carr & Company.

Q And that is a firm engaged in the retail sale of commodity options, is that correct?

A Substantially that is correct.

Q In what respects does it not -- what other business, if any, does Lloyd, Carr & Company engage in?

A I just put it a little differently, Mr. Levie. We are commodity trading advisors, and we make recommendations to clients regarding whether or not they should invest their funds into commodity options.

Q That is in addition to the retail sale of options, correct?

A It's a question of semantics and I'm not that good at it. I'd prefer to put it my way.

Q Does Lloyd, Carr & Company -- is Lloyd, Carr & Company a partnership?

A It is.

Q Is it registered in any way with the State of Massachusetts?

A I believe that it is, yes.

Q And who are the general partners of Lloyd, Carr & Company?

A Charles LeMieux III and myself.

Q Does Lloyd, Carr & Company through its salesmen or account executives solicit orders from members of the public for the purchase of commodity options in London?

A It does.

Q From 1969 to 1965 I note that you were employed in California as a sales manager, is that correct?

A I believe so.

Q And what type of business was that?

MR. HECHT: Objection.

I really don't see the relevance. You're going back ten years ago and there's nothing to do with any allegation in the Complaint.

JUDGE PAINTER: It may be germain. Let's hear the Witness respond.

THE WITNESS: We were sales representatives.

Q (By Mr. Levie) In what type of business, Mr. Carr?

A Hardware and such.

Q Was that business -- were you required in the course of that business to register with any agency of the federal or state government?

A No.

Q What were your precise duties?

MR. HECHT: Objection.

I think at this stage he's wandering. He's been given his chance, Your Honor. This has nothing to do in the Complaint. It's not remotely connected in any way, shape or form with any allegation in this Complaint or the Complaint filed in the Federal Court here. Just a total fishing expedition.

JUDGE PAINTER: Mr. Hecht, one of the issues involved here is the fitness of individuals to be registered and the fitness of a company to be registered.

Mr. Levie, does this relate to fitness?

MR. LEVIE: Yes, Your Honor.

If the Court wishes I will make a proffer out of the Witness's presence.

JUDGE PAINTER: Do so.

MR. HECHT: But before that, I'm going through and I'm going -- it's not alleged in the Complaint. It's totally improper. The grounds for fitness are set forth in the Complaint, and if they can't allege it in the Complaint, Your Honor, then they can't do it out of -- well, because you're not ruling on it I guess that kind of thing could be considered out of Court; but if you were ruling on the case that would be clearly prejudicial error.

It is out -- if they can't allege it and there's nothing alleged -- there are specific grounds alleged in this Complaint, and that's what they are. Doing business while not being "registered". Not meeting the minimum financial requirements, and that's what the Complaint says, and that's what we're going to live with because that's what they plead.

JUDGE PAINTER: Mr. Levie, this problem has come up on occasion on other cases in which the other good cause was used to bring in matters not alleged in the Complaint.

Now, does this -- are you bringing up some matter under the other good cause clause, or does this relate to a specific matter in the Complaint?

MR. LEVIE: It does, Your Honor, and I'll willing to make a proffer out of the Witness's presence to the Court.

JUDGE PAINTER: Mr. Carr, would you please step out of the room?

MR. HECHT: I would like to point out to this Court that very specifically there's been a ruling made by this Tribunal in another case that is contrary, and under the other good cause shown in the case you're referring to was the opposite result, International Shareholders before the SEC, where they held it was prejudicial error to go outside the Complaint, and the SEC on appeal dismissed it.

I'd like to point that out, Your Honor.

JUDGE PAINTER: Mr. Hecht, I don't intend to go outside the Complaint in the evidence we are going to take here, unless there is some very compelling reason to do so.

Mr. Levie, he has asked that Mr. Carr remove himself from the hearing room and he would discuss the basis for this question with you, on the record I assume Mr. Levie?

MR. LEVIE: Yes, sir.

MR. HECHT: I don't want this on the record, and if it's on the record I'm going to move immediately for a mistrial.

JUDGE PAINTER: Is there any reason -- it will be on the record, right?

MR. LEVIE: Your Honor --

MR. HECHT: Well, that's exactly the point. That's a way of sneaking it in the back door and I'm not going to tolerate it, and Mr. Levie -- they wanted an expedited proceeding -- now, I'm going to say something.

I got dragged up here to Boston in violation of the rules. We were not given time to prepare. They wanted expedited treatment. They don't come in in the middle of the hearing on a new evidenciary matter that is not alleged in the Complaint and then they're under a duty of disclosure.

That's why you have pre-trial conferences and they don't pull something like this.

JUDGE PAINTER: All right.

Mr. Levie, what section of the Complaint are we dealing with here?

MR. LEVIE: Paragraph 2 -- Your Honor, Section 2, Paragraphs A, B, C --

JUDGE PAINTER: Would you read those into the record to make it quite clear what we're talking about?

MR. LEVIE: If I might make one preparatory remark, Your Honor.

Mr. Hecht has been afforded an opportunity to state his objections on the record. I merely wish to make a proffer on the record, out of the Witness's presence, and I'll abide by the Court's ruling.

MR. HECHT: Absolutely not on the record, Mr. Levie. YOu don't pull this kind of tactic even if this tribunal was ruling on the issue. You want an expedited proceeding. According to your own Commission's Order the issues are narrowly confined to a Complaint with limited points, and that's what your own Commission's Order says and you can't do it, and I'm not going to tolerate it.

JUDGE PAINTER: Mr. Hecht, don't get exercised here.

We're trying to be fair in this proceeding. I want us to stick to the issues in the Complaint. I think it's a bit unusual to ask just the Witness to remove himself. It may be advisable to go off the record and have everyone remove themselves from the hearing room but Mr. Levie and Mr. Hecht and myself to discuss this matter to see whether it's germain to these issues.

Now, does that fit with your motion of fairness, Mr. Levie?

MR. LEVIE: The only problem I would have -- or at least the request I would make since Mr. Hecht has taken leave to state his position on the record to preserve this record, that whatever the -- that I be permitted after we've had the off the record discussion to place my position on the record. That's all. I'll abide by the ruling of the Court.

JUDGE PAINTER: Let us --

MR. HECHT: Mr. Levie -- I want to say one thing. My position was that it should not even be a part of the record. You're misconstruing it and you're trying to sneak it in through the back door. What I suggested and what the Judge felt was an idea was the three of us discuss it here off the record so he's in a position to make a ruling.

JUDGE PAINTER: So ordered.

Now, Mr. Levie, Mr. Hecht will remain in the hearing room. The Reporter can remain if he cares to, but you'll have to turn the machine off. So, we're off the record at this point.

(Discussion off the record.)

JUDGE PAINTER: On the record.

MR. LEVIE: Your Honor, I believe Mr. Hecht and I have reached a stipulation to read into the record.

JUDGE PAINTER: Would you read the stipulation, Mr. Hecht?

MR. HECHT: In lieu of any questions with respect to Mr. Carr's prior business background prior to the formation of Lloyd, Carr & Co. counsel has stipulated that he has prior expertise in business and is familiar with the need to comply with governmental regulations.

MR. LEVIE: Agreed, Your Honor.

JUDGE PAINTER: Thank you.

Q (By Mr. Levie) Mr. Carr, what is Lloyd, Carr Financial Company?

A It has the same function as Lloyd, Carr & Company. Had the same function as Lloyd, Carr & Company.

Q Is Lloyd, Carr Financial Company still in existence?

A I -- this will take more than a sentence or two, Mr. Levie.

I formed Lloyd, Carr & Company as a sole proprietorship. Within a number of weeks Lloyd, Carr Financial Company was formed with myself and Mr. Charles LeMieux III as a partnership. Now, we both occupied the same premises and we both did the same thing.

The reason why this was done was that I felt that Mr. LeMieux had considerable talent and integrity, and wanted to give him the opportunity to be in business with me, and yet not own any part of the company that I had originally founded.

So, the result was that both companies did the same thing. LeMieux and I shared ownership in the Financial Company, and I owned Lloyd, Carr & Company by myself. Now, as time passed, in fairness to Mr. LeMieux, I devoted ninety plus percent to the operation of Lloyd, Carr Financial Company and Lloyd, Carr & Company sort of just dribbled away.

What brokers we had we had employed by Lloyd, Carr Financial. We used the same paperwork and everything. We sort of felt that we were Lloyd, Carr Financial Company d/b/a Lloyd, Carr & Company. On or around the 18th or 19th or 20th of January of this year, at the request of the CFTC, we had all the names -- we made Lloyd, Carr & Company a partnership by my giving Mr. LeMieux half of that, and had everything changed from Lloyd, Carr Financial, from the name, the titles, the bank accounts and so on from Lloyd, Carr Financial Company to Lloyd, Carr & Company.

Q Was Lloyd, Carr Financial Company ever registered with the Commonwealth of Massachusetts?

A Yes, it was.

Q As a partnership?

A Yes.

Q You just stated that you felt that Lloyd, Carr Financial Company d/b/a -- was doing business as Lloyd, Carr & Company, correct?

A I treated them as one at all times, Mr. Levie, really.

Q And did you make or were any efforts made to inform -- or did the public deal with Lloyd, Carr Financial Co.?

A Yes. Lloyd, Carr & Company and Lloyd, Carr Financial Company were used. The names were used interchangeably in all relations with the company, employees and what have you.

Q Well, how were members of the public informed that when they were dealing with Lloyd, Carr & Co. they were also dealing with Lloyd, Carr Financial Co.?

A I do believe that the brokers on their first client contact indicated Lloyd, Carr Financial Co. as well as Lloyd, Carr & Co.

Q But were the brokers instructed to explain the difference between these two to the public?

MR. HECHT: Objection.

I don't see how it's relevant.

THE WITNESS: By whom, Mr. Levie? Instructed by whom?

JUDGE PAINTER: Answer the question. Don't question counsel.

THE WITNESS: I have no --

MR. HECHT: There's been an objection on the record, Your Honor.

JUDGE PAINTER: Overruled.

THE WITNESS: They were well aware of it and they were rather tightly structured, and if they were asked I'm sure they would have been -- they would have explained it.

Q (By Mr. Levie) Mr. Carr, did you ever explain it to your brokers that they were to instruct members of the public as to the relationship between Lloyd, Carr Financial Company and Lloyd, Carr & Co.?

MR. HECHT: Okay.

Your Honor, I just note my objection for the record. If they're held out as the same as a matter of law if one company is doing business as another company that's the whole purpose of doing business as.

JUDGE PAINTER: Overruled.

Answer the question.

THE WITNESS: The brokers knew the difference. They knew they worked for Lloyd, Carr and -- Lloyd, Carr Financial Company. They represented to the public that they were Lloyd, Carr Financial Company, I believe, as well as Lloyd, Carr & Company. As Reuters said we more or less considered ourselves as a Lloyd, Carr Group.

Q (By Mr. Levie) Who were the partners in Lloyd, Carr Financial Co.?

A Charles LeMieux III and myself.

Q What were Mr.LeMieux's duties and responsibilities with respect to Lloyd, Carr Financial Co.?

A They were administrative, sales, training and instruction.

Q During what period of time did Mr. LeMieux have any or all of these three functions?

A I would say to date, to this date.

Q Commencing when, sir?

A With the formation of Lloyd, Carr Financial Company, probably in August or perhaps the end of July 1976.

Q And what are Mr. LeMieux's specific administrative duties with respect to Lloyd, Carr Financial Co.?

A Well, for one, he wrote the checks on the company and took care of the checkbook. Number two, we had no bookkeeper when we started and he kept track of the transactions and broker's commissions.

Q Has he continued the function of writing checks through today?

A No.

Q And at what point with respect to Lloyd, Carr Financial Company did Mr. LeMieux cease acting as a monitor or a keeper of the books?

A Perhaps two months ago.

Q What were Mr. LeMieux's duties with respect to sales of Lloyd, Carr Financial Co.?

A I would say that we shared ownership in the company and we did things together. He did spend a lot of time -- his background with Shearson, Hayden, Stone and Citibank and so on qualified him very well for controlling a good part of the training program. You asked me what his duties were in sales?

Q Yes, sir.

A And he had client contact as well.

Q Did you and Mr. LeMieux divide -- or did you receive monies from Lloyd, Carr Financial Co.?

JUDGE PAINTER: Off the record.

(Brief discussion off the record.)

JUDGE PAINTER: On the record.

THE WITNESS: I heard his question completely.

As I understand it it being a partnership we owned whatever it had or was or did, and how do you take money out of it? I don't understand that from an accounting point of view.

Q (By Mr. Levie) Did you ever receive any money that came from a Lloyd, Carr Financial Company account?

A Did I ever receive any money?

Q Yes.

A I don't understand that. As I say, I understood that if you operate as a company that you are the company as opposed to operating as a corporation.

Q Mr. Carr, Lloyd, Carr Financial Company as a partnership made money? Received income, correct?

A Yes.

Q Part of that income was used to pay expenses, correct?

A I would hope so.

Q And part of that income was used to pay account executives, correct?

A Yes.

Q And there was some money left over, correct?

A I think the question you're really asking is, did we use any of the funds of the company for personal expenses? Would that --

Q That would be a fair question, yes.

A The answer is yes.

MR. HECHT: I'd like to object.

I don't see the relevancy. Obviously a man's entitled to make a living to pay for his room and board. I don't understand it.

JUDGE PAINTER: All right.

He got his answer. We'll go on. Mr. Levie?

Q (By Mr. Levie) Mr. Carr, did Mr. LeMieux likewise receive money from Lloyd, Carr Financial Co. as you did?

A Yes, he did.

Q With respect to Lloyd, Carr & Company Mr. LeMieux is a partner in that company as well, correct?

A Now he is, yes.

Q With yourself?

A Yes.

Q And what are the duties and responsibilities of Mr. LeMieux with respect to Lloyd, Carr & Company?

A The same as I have indicated they were with the other company.

Q What are your duties and responsibilities with Lloyd, Carr & Company?

A Say that I -- my -- I probably guide the formation of policy. That's probably most of it.

Q Do you have any administrative duties?

A Such as? I don't know exactly what you mean, Mr. Levie?

Q Perhaps we can break it down. Are you involved in the hiring of account executives?

A No.

Q Who does that?

A That's done by Mr. Tom Labus.

Q And does Mr. Labus consult with you before hiring anyone?

A No, not really.

Q Do you have the authority to say that someone shall or shall not be hired?

A Would I have that authority if I choose to exercise it?

Q Yes.

A I would certainly consider that I do.

Q Have you ever exercised that authority?

A As far as the hiring and firing of anyone, no.

Q Then I assume from your last answer you also have the ultimate authority with respect to deciding whether or not someone will be fired, correct?

A I would -- I would say that I had that authority but have not had occasion to exercise it.

Q Do you take part in the training of account executives?

A I do, sir.

Q For what period of time have you engaged in the taking part of the training of account executives?

A Since the beginning of each company.

Q With respect to Lloyd, Carr & Company that would be sometime in July of 1976?

A I believe so.

Q What -- do you approve the literature that's used by Lloyd, Carr & Company?

A I used to but they pushed me out of that.

Q Up until what point did you have that responsibility?

A Not really since September or so.

Q Of '76?

A Yes, sir.

Q Who has had responsibility since then?

A Our director of marketing, Tom Labus.

Q Does Mr. Labus report directly to you in his capacity as director of marketing?

A Only when I can catch him. He wants me out of it.

Q What role if any do you play with respect to customer complaints that come into the firm?

A Mr. Levie, we're rather well organized. Assuming a complaint should -- and I don't remember more than one or two in the entire run of the company. Assuming there was some difference of opinion between the account executive -- between the broker and the customer, we then have an assistant manager who would speak with the customer, visit him or invite him to visit us. If that resolution at that stage had not satisfied the customer there's a branch manager who would attempt to resolve it. From there it would go to the assistant national sales manager, the national manager, the director of marketing; and then to the director of marketing.

I doubt that it would come to me, although I can remember -- I don't mean to say I don't have any conversations with any customers, but of the two or possibly three complaints I may remember I had conversation with a customer on one occasion.

Q And what was that occasion?

A Maybe three weeks ago.

Q And --

A It's not that I'm not accessible. I am. But generally I'm not asked for it very often.

Q You have had occasion to counsel and give advice to your account executives, haven't you?

MR. HECHT: Objection to the form of the question. In that I think it's a double question.

JUDGE PAINTER: Sounds pretty clear to me.

Answer it if you can?

THE WITNESS: Do I counsel the account executives?

Q (By Mr. Levie) And give them advice, yes?

A In regards to which -- to what?

Q With respect to sales techniques?

A With respect to sales techniques, not usually. I can't say that I don't or haven't, but it's not my practice.

Q You've had occasion to -- or have you had occasion to assist account executives in a closing transaction?

A No, I don't do that.

Q Have you had occasion to talk --

Q Well, excuse me. No, I have not done that.

Q Have you had occasion to talk to customers and in the course of conversation asked them to place an order with your company?

A No, no.

Q Have you had occasion to meet with customers and advise them or state to them the advisability of purchasing options through your company?

A I have met with customers on perhaps a handful of occasions, and I have discussed our business with them. The structure of our company. The way we do business. I don't solicit -- I don't remember soliciting option business for many many many months. I'm going back perhaps to October or September of last year.

Q Directing your attention to February 4 -- excuse me, February 2 of 1976 did you have occasion to speak with Mr. Edward Talbot?

A Yes, I did.

Q And what was said in that conversation?

A He had stopped a check. He had asked our company to place an order for him for the purchase of an option, and I was advised by the Greenwich branch manager that this had happened.

Q And what steps did you, if any, take after learning this from the branch manager?

A He -- let's see. He had spoken to the client, since this had happened once or twice, and he was not satisfied with the resolution. The customer was -- let's see. I don't remember the exact reason, but he asked me if I would talk with the customer.

Q Did you --

A Which I did.

Q In the course of speaking with Mr. Talbot did you ask him to send in the money to pay for the new option?

A Okay. It wasn't a new option. Here's what happened. He had placed an order for two options with the house, and I asked him why he stopped payment on the check. He had indicated that the order had not been executed promptly, in his terms.

I explained why to him and at the time there was some difficulty in finding grantors for the particular option, and I suggested to him that instead of -- instead of buying two options as he was doing to cancel one of them and see how the firm handled the execution of his other option, which he agreed to do, and he apparently was satisfied.

He was good enough to come in and visit us a week or two ago with his account executive, and I understand they placed some additional business.

Q Before we leave the conversation of February 2 with you and Mr. Talbot, did you during that conversation ask Mr. Talbot to send in any money to pay for the placement and execution of an option with him?

A I suggested to him that he cancel one of his two orders with us, and see how we handled the other option. Now, whether or not the conversation came to money I don't remember that it had, but by this time having dealt with us I would have been justified in taking it for granted that he knew that there was money involved in the purchase of an option.

Q In your conversation on February 2 of this year with Mr. Talbot do you recall whether or not you asked him to send in another check to pay for the purchase and execution of a commodity option?

A I asked him -- I would say that I asked him to -- if it sounds repetitious I think your question is too, Mr. Levie. I asked him to cancel one option and let the purchase of the other one stand, period.

Q He cancelled the check to pay for --

A He stopped payment on the check -- well, that started the conversation, naturally --

MR. LEVIE: May I ask the Court to instruct the Witness to answer my question?

JUDGE PAINTER: I think he's covered that ground pretty well, Mr. Levie. Apparently Mr. Talbot stopped his check and

I assume you wanted him to maintain one order with you which meant you were asking him to send you at least a smaller check, right?

THE WITNESS: It meant it, but I thought Mr. Levie was asking me specifically did I say to him "Mr. Talbot, send in your check for one." And the conversation was not structured in that manner.

JUDGE PAINTER: But that was the import of the conversation? That you wanted him to place an order for one and not two?

THE WITNESS: He had the orders. The orders were placed a week before --

JUDGE PAINTER: You meant for him to send you some money for the one he would keep?

MR. HECHT: Your Honor, I don't think that's a fair characterization --

THE WITNESS: Certainly you can assume that.

JUDGE PAINTER: All right.

Mr. Levie, you proceed then.

MR. LEVIE: Thank you, Your Honor.

Q (By Mr. Levie) Mr. Carr, you weren't going to reinstate the cancelled order of Mr. Talbot without receiving some money from him, were you?

A It happens that we did. It happens that we did.

Q He sent you in a check on February 2, did he not?

A I believe that we placed his order before we received that check, Mr. Levie, come to think of it.

Q But you placed that order with the knowledge that he would be sending in a check to pay for that order, correct?

A I had the knowledge. I assumed or had the knowledge that that check would be forthcoming.

Q And that knowledge was based on the conversation you had had on February 2 with Mr. Talbot?

A That is correct, Mr. Levie.

Q During which you suggested to him that he send in money for an option order, correct?

A Don't put words in my mouth.

JUDGE PAINTER: Mr. Carr, maintain your demeanor here.

THE WITNESS: Excuse me, Your Honor.

JUDGE PAINTER: You are a witness.

Move on from that point, Mr. Levie.

Q (By Mr. Levie) Mr. Carr, what is the procedure accepting and placing orders for commodity option purchases at Lloyd, Carr & Company? In other words, when a customer calls in and say "I'll agree to purchase." What happens next? What forms are filled out?

A He may agree to place his order for the purchase of an option, but the account executive has to fill out a sheet, it's a pink sheet. We call it a pink sheet. And it has certain information on the client. There are -- there have been many occasions where we have refused to do business with a client because of --

JUDGE PAINTER: Just stick to the question he asked. I don't want to cut you off.

THE WITNESS: Okay, that's all right.

It indicates what his family obligations are, such as is he married; is he living with his wife; does he have children under 18 who are dependents; what is his net worth exclusive of his home --

JUDGE PAINTER: Is this what you wanted in response to your question?

MR. LEVIE: I think perhaps I can shortcut it, Your Honor, and if Mr. Hecht feels that this should be brouhgt up perhaps he can do it on cross, but I think for my purposes I can restate my question to Mr. Carr.

MR. HECHT: I want to point out to you, Mr. Levie, I'm reserving my right very specifically when we put in the Respondent's case that if I feel it's appropriate I can either put it in by rebuttal on our case, when it's time to put our case in.

I'm not going to be told how to put in my case. Thank you.

JUDGE PAINTER: Proceed, Mr. Levie.

MR. LEVIE: Thank you, Your Honor.

Q (By Mr. Levie) Mr. Carr, in the paperwork that is processed when an option order is placed and executed with your firm do you have the authority to authorize the placement of a commodity option order?

A Do I have the authority? I have the authority to tell anybody in that company what to do, Mr. Levie, if that can cut through some of the smoke. In the normal functioning of the business I would not be called upon to exercise that authority.

Q Have you ever exercised that authority?

A The authority to tell other people what to do? Yes, I have.

Q Is it a procedure at Lloyd, Carr & Company that someone must authorize the acceptance or placement of a commodity option order?

A Yes, the pink sheet is signed by the broker in which he tell us -- he signs it above a statement that says that this is the information given to me by the client. The pink sheet is then given to the branch manager. The branch manager who also -- can I refer to that?

MR. LEVIE: Can we have it marked for identification, Your Honor? I think it will be easier for purposes of the record?

JUDGE PAINTER: Mark it as Division Exhibit.

(Thedocument above-referred to was marked Division Exnibit No. 7 for identification.)

Q (By Mr. Levie) Mr. Carr, I show you what has been marked for identification as Division Exhibit 7. Is that the form to which you're referring?

A It is the form, Mr. Levie. So, the broker also indicates to us that he has told the client that he can lose all his money. What the risks are, and the past performance and so on doesn't mean that we're going to be 100% right, or even 1% right.

The broker signs it and dates it and it's then given to the branch manager. The branch manager of course -- until recently did not speak with the client, merely referred to the sheet and indicated that based on the information that the broker has said the client had given him financially the client would be suited to the purchase of an option.

We now have a somewhat different procedure in which the branch manager doesn't sign this sheet until he himself has spoken to the client to determine that the information on the sheet was accurate.

Q Have you ever had -- from January 17, 1977 to the present have you ever had an occasion to sign off on a document such as Division Exhibit 7?

A No, I have not.

Q Mr. Carr, I now hand you Division Exhibit 8 for identification which is an eight part form, and direct your attention to Form No. 2 of that eight part form. Are you familiar with that eight part form?

A Yes, I am.

(The document was marked Division Exhibit No. 8 for identification.

Q Is it used in the business of Lloyd, Carr & Company?

A It is.

Q Part No. 2 requires the signature indicating -- from someone of Lloyd, Carr & Company on that form, correct?

A That's correct.

Q Since January 17, 1977 to the present have you had occasion to sign or initial any forms No. 2 contained in Division Exhibit 8?

A Yes, I have.

Q Approximately how many, if you recall?

A I don't recall.

Q There are --

MR. LEVIE: If I might ask Mr. Hecht if he has a blank copy of the option order form, the yellow form?

MR. HECHT: The yellow form? A blank copy? No, I didn't bring that over. That's the yellow form that says signed, authorized and approved. You have a copy there?

We're bringing over the actual ones.

JUDGE PAINTER: Off the record.

(Short recess taken.)

JUDGE PAINTER: On the record.

Now, Mr. Levie, you have a representation to make concerning Monday, for the record?

MR. LEVIE: I think Mr. Hecht has a request.

MR. HECHT: Mr. Carr has advised me that his personal funds in Montreal that have nothing to do with Lloyd, Carr & Co. or any related company were attached by the Quebec Securities Commission and this was apparently done with some cooperation of the CFTC.

They are his personal funds, have no relation to the business. The Quebec Securities Commission has asked him to bring counsel up there who is familiar with the Lloyd, Carr situation and the CFTC to handle a hearing with respect to the attachment of these personal assets of Mr. Carr.

The gentleman's name I believe is Mr. Cote, I don't know if I'm pronouncing it correctly.

THE WITNESS: You are.

MR. HECHT: And in that connection Mr. Carr has brought this to the attention of this tribunal since there is an order that says it must continue without interruption.

Judge Painter has suggested to counsel that they attempt to work out a stipulation amongst themselves and in that connection Mr. Levie has called Washington.

JUDGE PAINTER: Thank you.

It is now 11:10 and I see no reason to proceed further today inasmuch as in five minutes Mr. Hecht will be on his way to the airport.

Any last statement for the record today?

MR. LEVIE: Yes, Your Honor.

We are presently -- the Division is presently checking into the exact status of the Montreal situation, how long it's expected to last, the actual necessity for American counsel to be there as opposed to Canadian counsel. We would deny that any action was taken with the cooperation or assistance of the Commission.

The bottom line at this point is that I have called Washington to speak with the Director of the Division of Enforcement to see what our position would be with respect to an adjournment on Monday only, and that if we concurred it would be a concurrence only to the extent that we would not oppose a request by Mr. Hecht to the Commission that the hearing be adjourned for one day on Monday to reconvene Tuesday morning and continue without interruption.

I should have an answer for the Court, although Mr. Hecht won't be here, in 15 minutes. His associate counsel will be here. So, they can be advised what are the appropriate steps, if any.

JUDGE PAINTER: Thank you.

MR. HECHT: No, he's going back to New York because we have something -- an emergency came up in another Commission matter. But call my office. My secretary is there.

JUDGE PAINTER: All right.

This will come up then at least tomorrow morning at ten o'clock. It's agreed we will reconvene tomorrow at ten, and we will recess tomorrow at approximately one.

MR. HECHT: About one, one fifteen.

JUDGE PAINTER: Is that understood, Mr. Levie?

MR. LEVIE: That's understood.

JUDGE PAINTER: Fine.

Off the record.

(Whereupon, at 11:13 a.m. the hearing was adjourned to meet again on Friday, March 11, 1977 at 10:00 a.m. at the same place.)

COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

JAMES A. CARR, and CHARLES P. LE MIEUX III
d/b/a LLOYD, CARR & CO., A PARTNERSHIP,
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL CO.
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

JAMES A. CARR

CHARLES P. LE MIEUX III

Respondents

No. 77-6

John McCormack Post Office and
Federal Building
Room 932
Post Office Square
Boston, Massachusetts

Friday, March 11, 1977

The above-entitled matter came on for further hearing, pursuant to Adjournment, at 10:00 a.m.

BEFORE:

Honorable GEORGE H. PAINTER, Administrative Law Judge

APPEARANCES:

RICHARD LEVIE, Esq. and MICHAEL STEWART, Esq., and ELLEN MELTZER, Esq.,	Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20851; appearing on behalf of the Commission.

APPEARANCES (Continued):

CHARLES HECHT, Esq., and HAIG COSTIKYAN, Esq.,	Law firm of Charles Hecht, 60 East 32nd Street, New York, New York 10017; appearing on behalf of the Respondents.
G. LAMAR CRITTENDEN, Esq.,	Law firm of Barrett & Lamont, 65 William Street, Wellesley, Massachusetts 02181; appearing on Behalf of the Respondents.

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PROCEEDINGS

10:15 a.m.

JUDGE PAINTER: On the record.

Take note of the fact that it is now 10:15 and we were supposed to convene at 10:00 this morning.

Mr. Levie, I understood that you wanted Mr. Carr here as a witness. Is that the only witness you intended to put on today?

MR. LEVIE: Yes, Your Honor.

There are several preliminary matters to be taken up before we recommence with Mr. Carr, though.

JUDGE PAINTER: You mentioned a possible stipulation you might possibly work out with Mr. Carr concerning a matter?

MR. LEVIE: I'd like an opportunity to discuss it with Mr. Hecht. It can be done on the record. It's a possible stipulation regarding some bank records.

JUDGE PAINTER: And whether or not you needed a witness for that purpose?

MR. LEVIE: Yes.

JUDGE PAINTER: Well, we'll go to 10:30 and perhaps you had better move to get the Witness called in where Mr. Carr and Mr. Hecht don't make any show at all.

MR. LEVIE: Very well.

JUDGE PAINTER: Off the record.

(Short recess taken.)

JUDGE PAINTER: On the record.

Mr. Hecht, it's now 10:20. We're ready to proceed with the hearing.

Mr. Levie, I believe you were examining Mr. Carr at the close of yesterday's session.

MR. LEVIE: I have several preliminary matters, if I might Your Honor.

The first is that I would ask for the materials to be provided by Mr. Shuster to be turned over to us?

MR. HECHT: Okay.

My office received those last night. I made four copies for the Court.

(Counsel turns over documents.)

JUDGE PAINTER: Thank you, Mr. Hecht.

The documents of Mr. Shuster have been turned over to me by Mr. Hecht. My second preliminary matter regards some bank statements and checks with respect to Lloyd, Carr Financial Company and Lloyd, Carr & Co., and I believe that Mr. Hecht has agreed that I need not have the custodian of the records come in to introduce those documents into the record.

They may be admitted.

MR. HECHT: Go over them with Mr. Carr who signed them, and see if he recalls them.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

MR. LEVIE: Mr. Hecht, having afforded Mr. Carr an opportunity to examine the bank documents which I propose to introduce, is it my understanding that there will be no objection to their admissibility with respect to authenticity and genuineness?

MR. HECHT: There will be no objection on the grounds of authenticity and genuineness. They are copies and they appear to be true copies.

MR. LEVIE: Your Honor, the next preliminary matter I have is with respect to the subpoena and the documents which were turned over to us at the conclusion of yesterday's hearing with respect to the option order forms and the confirmations provided by Lloyd, Carr & Company.

It is the position of the Division that the documents that were tendered to us yesterday are unacceptable, Your Honor, for the following reasons.

The Complaint charges Lloyd, Carr & Company with failure to keep required books and records under two sections of the regulations, 1.18 and 32.7, the latter having reference to the new option regulations.

There has been -- well, let me rephrase it, if I might. The documents that were turned over to us are insufficient for five specific reasons.

Number one, they are illegible in large part. Number two, there appear to be option orders and confirmation slips which are missing. Number three, the option order forms have a cutoff date of approximately February 11 or 14. The confirmation forms appear to have a cutoff date of February 11 or 14, that is those which were turned over to us. Now, it was requested yesterday that the cutoff date for the subpoena be February 23. If Mr. Carr is prepared to testify that no monies were accepted, no orders were solicited between February 14 and February 23 then that would answer one problem we have.

The third problem we have with the documents that were proffered to us is that the absence of the names on these confirmation slips prevents any verification as to the accuracy of the information that is contained on those documents. For all we know those documents could have been printed up on a typewriter, sent to customers and the orders never placed in London. So, there's no way we have, from any records which have been turned over to us, to ascertain whether these option orders have ever been executed in London.

And the final reason that the records are insufficient, YOur Honor, is that under both 1.18 and 32.7 Lloyd, Carr & Company is required to keep and provide to members of the

Commission the names and addresses of all their customers. In connection with that Lloyd, Carr Financial Company has been registered and is still registered to this point as a commodity trading advisor. Under the Statute, Section 4 of the Statute, a CTA is required to turnover names and addresses of its customers to any person from the Commission.

JUDGE PAINTER: Respond, Mr. Hecht?

MR. HECHT: Yes, Your Honor.

I will check -- there are the copies. The originals were given to the Clerk of -- or the law clerk for Judge Painter to check that the copies you got were true copies.

The reasons the names were taken out and I'll state it again for the record, is that the Division of Enforcement in connection with another client in a situation I am familiar with took customers names of the company, in that case without any authority and using surreptitious means and called the company's customers up after an administrative proceeding was instituted.

There is presently pending an action in the Southern District of New York enjoining the Division of Enforcement from using these tactics.

Thirdly, if in fact the Commission is now taking the position that as a CTA Lloyd, Carr & Co. is required to give this information then as a matter of law this suit must be dismissed because under 5 USC 558 of the Administrative Procedures Act in order to revoke a license you are statutorily required to give such person prior notice of what the deficiencies are, and give them the opportunity to correct it.

At no time has the Division of Enforcement or anyone at the CFTC prior to the institution of this proceeding ever notified orally or in writing deficiencies of Lloyd, Carr with respect to its record keeping as a CTA, and if in fact that's your position then this action should be dismissed.

Third point, we will check in the records, you have copies there, the originals were given to the Court. If in fact the records were only through February 14, we will check back in the office and give you the records for the next nine days.

JUDGE PAINTER: Mr. Hecht, Mr. Levie to expedite matters, this will be the ruling on this.

Mr. Levie, you have with you an auditor of the CFTC with you this morning?

MR. LEVIE: Yes, Your Honor.

JUDGE PAINTER: Do I have your statement on the record that if your auditor is sent over to Lloyd, Carr & Company to inspect the books and records; to make copies of the materials that you are entitled to for this proceeding that you will make no contact with any customer on that list of names that you obtain there?

MR. HECHT: Your Honor, I think --

JUDGE PAINTER: Let me hear from Mr. Levie, first?

MR. LEVIE: No, Your Honor, I cannot make that representation for the following reason.

We're still left with the problem of -- a question of whether the accuracy of the information -- whether the information contained on those forms is accurate and true.

In other words, we would be given customer forms saying that John Doe bought a commodity option on February 13, and all the information about the option. Not being able to contact John Doe we have no way of knowing whether that option was ever in fact purchased by John Doe; whether Lloyd, Carr ever executed that option for John Doe; but more importantly --

JUDGE PAINTER: Mr. Levie, can't you ascertain that without contacting the customer?

MR. HECHT: Yes, you can Your Honor.

JUDGE PAINTER: You have access, at least, to the party from whom the options are purchased, do you not?

MR. LEVIE: Mr. Carr can provide us with the telex or confirmations and month end statements from their carrying broker in London, and we can then match those up to see whether the option was in fact executed in London.

However, for purposes of record it's the Division's position that there is no authority under which the Respondent here can proffer documents to the Court and have them altered and placed into the record. So, we cannot accept that proposition.

JUDGE PAINTER: Mr. Levie, I agree with your position to some extent. However, for the purposes of this proceeding I do not want you to be telephoning the customers of Lloyd, Carr & Company.

Now, I'm going to direct Mr. Carr to permit your auditor to go to Lloyd, Carr & Company this morning to inspect all books and records that are supposed to be available for CFTC inspection; with names, addresses, purchases, everything else. Anything you need that you're entitled to see under the regulations.

I am directing, however, that you not contact those customers unless you take an interlocutory appeal of my ruling here with the Commission and get their authority to do so. I'm ruling for the purposes of this proceeding you may not do so.

MR. HECHT: Your Honor?

JUDGE PAINTER: Mr. Hecht.

MR. HECHT: Two points.

(A), as your clerk verified the documents were not altered. We have given you the originals. They were compared with the copies.

JUDGE PAINTER: I'm aware of that, Mr. Hecht.

MR. HECHT: Secondly, I -- under the circumstances such an order by you could not be subject to a contempt proceeding. The only protection I can give my clients is a Court Order from Judge Tauro, and we've had an experience --

JUDGE PAINTER: You may try to find that, but I'm directing you, Mr. Hecht, without any reservation to permit this auditor to examine the books and records of Lloyd, Carr & Company. And I suggest that that be done now.

MR. HECHT: Okay.

Your Honor, we are providing the documents. If there -- he hasn't said -- he said they were incomplete. I'd like to see the copies because --

JUDGE PAINTER: Mr. Hecht, are --

MR. HECHT: I'll return to the company --

JUDGE PAINTER: Mr. Hecht, are you telling me that you will not -- your client will not permit the auditor to go through those books?

MR. HECHT: We are producing the documents that are requested. As a matter of fact, what you should ask for and we'll give you which is not in there, we will give you a copy of the telexes to our clearing broker in London, which shows the purchase of the options from January 17.

JUDGE PAINTER: Mr. Hecht, I want to know if your client has any objection to this auditor going at this time to Lloyd, Carr & Company to inspect those books and records?

MR. HECHT: Your Honor, I have no objection on the following proviso, and let me state my reasons. I know you're trying to expedite this.

In fact, the situation came up with another company. I suggested to the Bureau of Audit that since there was a pending case on this surreptitious investigation techniques to apply to a federal court. It's a pending case. Bring on a motion as long as there are Court ordered protections protecting our rights with our customers we would have no objection.

You know what? They never filed the motion. And yesterday --

JUDGE PAINTER: This is an order again, that I am directing you and Mr. Carr to permit the auditor to review those books and records.

All I want is a yes or no?

MR. HECHT: Your Honor, they've already been up there to review --

JUDGE PAINTER: All right, Mr. Hecht --

MR. HECHT: And we're furnishing the documents. What is the problem here. We worked out an agreement to furnish documents --

JUDGE PAINTER: Mr. Hecht --

MR. HECHT: We can't be trying a case here and trying it in our offices at the same time.

JUDGE PAINTER: Mr. Hecht, that is the ruling.

Now, the auditor is here. Do you know where the offices are located, Mr. Levie?

MR. LEVIE: Yes.

MR. CARR: Your Honor, may I say something?

JUDGE PAINTER: Mr. Carr.

MR. CARR: Thank you.

Mr. Levie made a misstatement right now that is a total misrepresentation of the facts. At least --

JUDGE PAINTER: Well, have your attorney cover this, Mr. Carr --

MR. CARR: But Your Honor --

MR. HECHT: He knows technically.

MR. CARR: He said that Lloyd, Carr --

JUDGE PAINTER: Mr. Carr.

MR. CARR: Okay.

MR. HECHT: I have permission from my client to make a statement on the record. He can do it with my knowledge.

Please make a statement if you know something that can clarify this situation.

MR. CARR: It's their position that Lloyd, Carr & Company is different from Lloyd, Carr Financial. Lloyd, Carr & Company is not a commodity trading advisor, and does not have to make their books and records available for the CFTC. And the sales that they're referring to are those of Lloyd, Carr & Company.

JUDGE PAINTER: All I want to know from Mr. Hecht is whether this auditor will have access to the books and records.

MR. HECHT: If they obtain an order from Judge Tauro. That I know if they violate it --

JUDGE PAINTER: Thank you. Thank you.

MR. HECHT: -- that I can hold them in contempt, fine. It's the same procedure that I set up with another company. They're aware of it. And it's the Division of Enforcement and I want them held accountable, Your Honor. Because it's the only thing that's enforceable is a Federal Court Order.

JUDGE PAINTER: Mr. Hecht, I deem you to be in violation of the Order that I have issued. I will take appropriate action on this matter at a later time.

Mr. Levie, proceed please?

MR. HECHT: Your Honor, I do have some preliminary matters to raise and I think I should be given the same opportunity as Mr. Levie.

Number one, I would like to check out the confirmation slips here because -- to see if in fact Mr. --

JUDGE PAINTER: Are you discussing those records that were brought over? I'm not discussing those further today until you permit this auditor to review those books and records, Mr. Hecht.

MR. HECHT: Your Honor, he's not -- the only problem with the records as he alleged -- everything he subpoenaed we are bringing over. We've worked out an agreement. It's been stipulated on the record what documents would be supplied. We are supplying them, and they're being reproduced. We --

JUDGE PAINTER: I want no further discussion of these books and records until an auditor visits the offices of Lloyd, Carr & Company.

MR. HECHT: Your Honor --

JUDGE PAINTER: Now, is that the only preliminary matter you have to bring up?

MR. HECHT: No, but I should point out that we are in the middle of an administrative proceeding.

JUDGE PAINTER: Yes.

MR HECHT: I never heard of this in my -- I never heard of this before in the middle of a proceeding.

JUDGE PAINTER: You heard of it now, Mr. Hecht. Don't argue.

MR. HECHT: Aren't they entitled to be represented by counsel at such an inspection?

JUDGE PAINTER: Mr. Hecht, you take care of that with your client at any time you care to, but I want to move this proceeding along. What other preliminary matters do you have?

MR. HECHT: Okay.

In reviewing the transcript of the first day's hearing there was marked at the beginning of the transcript, because I was not permitted to make a statement with respect to my due process allegations, that I could put in a copy of the affidavit filed in support of Lloyd, Carr's motion for a preliminary injunction, temporary restraining order, and declaratory relief with respect to the legality of this issue.

At this time I am tendering it to the Court to be put in as part of the record. And I noted that there is already a Respondent's Exhibit 1 already --

JUDGE PAINTER: Would you please mark that then as Respondent's Exhibit 8.

(The document above-referred to
was marked Respodnents Exhibit
No.8 for identification.)

JUDGE PAINTER: Any objection, Mr. Levie?

MR. LEVIE: I understand this is just in compliance with your order, Your Honor.

JUDGE PAINTER: Exhibit R-8 submitted into the record.

(The document heretofore marked
Respondent's Exhibit No. 8 for
idetnification was received in
evidence.)

MR. HECHT: In addition, Your Honor, Ms. Shaffer advised the firm that she had additional notes with respect to Respondent's Exhibit 1. If the Division has no objection we can either admit them to supplement Respondent's Exhibit 1 or recall her so that she can verify that these are her notes, and that they are part of the notes.

JUDGE PAINTER: Mark this as Exhibit R1(a).

(The document abovereferred to
was marked Respondent's Exhibit
No. 1(a) for identifiaztion.)

JUDGE PAINTER: Does this fall in line with the training materials?

MR. HECHT: Yes.

JUDGE PAINTER: I will reject the document and you may associate it with the rejected R1.

MR. HECHT: Can I ask permission to have the Court Reporter mark this as R1(a)?

JUDGE PAINTER: Please do so.

(The document heretoforemarked Respondent's Exhibit 1(a) for identification was rejected.)

MR. HECHT: The next preliminary matter is that yesterday the Court in denying our motion for certain material relating to the registration of FCM's and associated persons between November 24 and February 3 indicated that it would certify this as an interlocutory appeal.

JUDGE PAINTER: I granted you authority -- permission to file an interlocutory appeal.

MR. HECHT: Right.

My office back in New York is preparing it. We checked the rules. We will bring the motion on under the rules. It has to be brought to you and then you have to certify it on up. I can't go directly. I checked the rules, and 10.101 has a very specific procedure. So, we're having it typed up today and will bring it up Monday morning.

JUDGE PAINTER: Thank you.

MR. HECHT: And --

MR. LEVIE: Won't you be in Montreal Monday morning?

MR. HECHT: Well, it will still be typed up. I don't have to be here to present the motion and Judge Painter has indicated he would like the motion as soon as possible, and I don't know if I'll be in Montreal Monday, because we haven't yet heard back from the Commission.

The next preliminary matter is that we note here there are two people who are from a competitor of Lloyd, Carr & Co., which competitor was served yesterday with a temporary restraining order relating to two former employees of Lloyd, Carr & Co. And I think it's highly unusual that all of a sudden they show up at a hearing when Mr. Carr is on the stand, and it could possibly be used to his competitive disadvantage.

JUDGE PAINTER: Mr. Hecht, yesterday I believe you made several remarks about star chamber proceedings. This is a public hearing. Anyone's entitled to be here. We would sequester witnesses, but I have no intention of excluding anyone from the hearing.

MR. HECHT: Your Honor, I haven't asked that the press be excluded. I just wanted to know what the basis was. I think that if in fact they were told to come over by the CFTC we're entitled to know.

JUDGE PAINTER: Why don't you inquire at the next coffee break as to whether Mr. Levie invited these individuals over.

MR. HECHT: Okay, thank you.

JUDGE PAINTER: Now, is that your last preliminary matter?

MR. HECHT: Yes, Your Honor.

JUDGE PAINTER: Mr. Levie.

Whereupon,

JAMES CARR

was recalled as a witness and having been previously sworn was examined and testified as follows:

MR. HECHT: There is one other preliminary matter, Your Honor. We have a copy with us that they will xerox of the -- you know, we're bringing over when the documents are done of the trial balance of Lloyd, Carr & Co.

The subpoena asked for January 1. January 1 was a holiday. The trial balance is of the last business day of 1976 and we have that to present in compliance with the subpoena.

In addition, I understand that they've sent out to a special xeroxing place the purchase order journal which I would request the same procedure with respect to the confirmation slips. That the original be given to you to be compared by your law clerk with the copy furnished to the Commission and all the information will be identical but the name of the customer.

JUDGE PAINTER: I appreciate your efforts to comply, Mr. Hecht, and we'll take that up when we get back to it.

Now, Mr. Levie, if you would begin your questioning of Mr. Carr.

MR. HECHT: Do you want that particular exhibit at this time?

JUDGE PAINTER: I'd like to get something on the record from this Witness. The time is running short here.

MR. LEVIE: Ready to proceed, Your Honor.

JUDGE PAINTER: Proceed, Mr. Levie.

DIRECT EXAMINATION (Continued)

Q (By Mr. Levie) Mr. Carr, you were familiar with the proposed option regulations that were published in the Federal Register in early October of 1976, correct?

A I don't remember the date, Mr. Levie. I'm familiar with some of the regulations that were published there.

Q Some time toward the end of October 1976 you had occasion to read those proposed option regulations that had come out in early October '76, correct?

A I don't remember that, Mr. Levie.

Q May I direct your attention Mr. Carr to an affidavit filed in the case of British American Commodity Corporation and Lloyd, Carr against the CFTC, executed by you on the 15th day of November 1976.

And I direct your attention to paragraphs 5 and 6 of that document and ask you if you would read it to yourself and I'll supply Mr. Hecht with a copy right now.

MR. HECHT: For the Court's convenience I have brought up the entire appendix and record on appeal that the Court is free to use with me because it's quite an extensive litigation. It's here. I'll try to make it available so that they can refer to it.

JUDGE PAINTER: Thank you, Mr. Hecht.

THE WITNESS: Could you repeat your question, Mr. Levie?

Q (By Mr. Levie) Yes. Mr. Carr, having had the opportunity to review an affidavit you executed on November 15, 1976 I now ask you if you had occasion in October 1976 to read the proposed option regulations issued by the Commission on October 6, 1976?

A Well, I --

MR. HECHT: Objection to the form of the question. There were no regulations issued or published on October 6, 1976.

JUDGE PAINTER: Overruled.

Let's hear the answer.

THE WITNESS: The term is proposed.

Q (By Mr. Levie) That's correct. This apparently is dated November 15, I say apparently. And I indicated in there that I had read the rules. I have no reason to retract that statement.

Q Did you read those rules as they were issued -- I'll rephrase it. In reading the rules that were issued on

October 6, 1976, the proposed regulations, did you read them in the Federal Register release or in the Commodity Futures Law Report issued by Commerce Clearing House?

A I read so much since then I have no idea where I read them.

Q I call your attention again to paragraph 5 of the affidavit you executed on November 15 of 1976 where you make reference to publication of those proposed regulations in the commodity futures law report. Does that refresh your recollection as to where you read that?

A No, it doesn't. Because I didn't say that I had read them in the CCH.

Q Do you remember where you read them, sir?

A I really don't, Mr. Levie. Apparently I read them somewhere.

Q And do you recall reading in the release accompanying the proposed regulations that processing of FCM and AP applications would require 30 to 60 days?

MR. HECHT: I'd like to state a formal objection for the record that at no time are the Respondents in this proceeding conceding that that was ever proper notice, and secondly, those regulations were withdrawn as a result of this filing on November 15, and therefore a moot question.

JUDGE PAINTER: Objection overruled. State the question again?

Q (By Mr. Levie) Do you recall reading in the release or notice accompanying the proposed option regulations issued on October 6 of 1976 that the processing for FCM and AP applications would take 30 to 60 days?

A I don't recall ever having said that I read any release that accompanied the regulations, Mr. Levie.

Q Did you ever come to know, Mr. Carr, in October or early November of 1976, from whatever source, that the processing of AP and FCM applications normally would take 30 to 60 days?

MR. HECHT: I'd like to state this as a continuing objection. I also would like to point out for the record that this point --

JUDGE PAINTER: Overruled. Overruled.

MR. HECHT: Your Honor, can I finish? That the Second Circuit --

JUDGE PAINTER: No, Mr. Hecht --

MR. HECHT: -- in oral argument pointed out --

JUDGE PAINTER: Mr. Hecht --

MR. HECHT: -- that this wasn't even sufficient notice.

JUDGE PAINTER: Mr. Hecht, we are on very short hours today to accommodate you and your many other travels.

MR. HECHT: Your Honor --

JUDGE PAINTER: You came in late this morning and I intend to get something from this Witness before we reconvene this proceeding in Washington, D.C. either Monday or Tuesday of next week.

MR. HECHT: Your Honor, two things. That's a --

JUDGE PAINTER: Please make your objection and I am requesting that Mr. Levie continue with his direct examination of the Witness.

MR. HECHT: Two things, and I want to make it very clear on the record.

I had to go down and get a Court Order from Judge Tauro to be released for a prior commitment, and the second thing is I'm putting a formal objection on the record of this hearing in Washington.

This is the first notice that we ever gotten of it. 10.61 says "for the convenience of the parties and their counsel". We have already advised this tribunal that the convenient forum is in New York.

JUDGE PAINTER: Mr. Hecht, I am directing you to limit your remarks to a simple objection for the record, and not stall this proceeding throughout the rest of the day.

Mr. Levie, would you kindly state your question again?

Q (By Mr. Levie) Mr. Carr, did you come to know in late

October or early November -- in October or November of 1976 from whatever source that normal processing for AP and FCM applications would take 30 to 60 days?

A I believe that I was aware that the Commission indicated somewhere at some time that in their considered opinion it would normally take 30 to 60 days in which statement I would not have put much stock.

Q Did you read the proposed option regulations issued in November of 1976 by the Commission?

A It's likely that I did. I don't remember reading --

Q Did you come to learn of the contents of the regulations issued in November of 1976?

A I believe that I came to know the salient features of those regulations.

Q Did you not learn that one of the salient features of the regulations promulgated in November of 1976 required that an FCM be approved by January 17, 1977 before solicited option orders or accepted money?

A I was aware that was one of the proposed -- one of the regulations.

Q Did you read in the proposed regulations that persons accepting monies for the purchase of commodity options were required to keep certain books and records as of DEcember 9, 1976?

A Certain books and records, yes. Which ones they were

I'm not sure I did know.

Q Did you ever read the proposed regulations issued in October 1976 with respect to Section 32.7 which specified the exact books and records to be kept?

MR. HECHT: Objection to the form of the question. By terms that it doesn't apply until you're either already registered or within one month of your registration.

JUDGE PAINTER: Overruled.

THE WITNESS: Yes, Mr. Levie?

JUDGE PAINTER: State the question again, Mr. Levie?

Q (By Mr. Levie) Did you read in Section 32.7 of the option rules proposed on October 6, 1976 by the Commission that certain clearly specified records had to be kept as of December 9, 1976?

A I don't think so, Mr. Levie. I don't think so.

Q In the order issuing option regulations of November 24, 1976 did you have occasion to read Section 32.7 of those proposed regulations which required the keeping of specified books and records as of December 9, 1976 by persons who accepted money for the purchase or sale of commodity options?

MR. HECHT: Your Honor, objection. Hypothetical question. He said proposed regulations.

JUDGE PAINTER: He wants to know whether this Witness is familiar with the terms of these proposed regulations. I think he's entitled to a response.

Answer the question.

MR. HECHT: Your Honor, I don't disagree. I just think the question should be put in such a way that they are not hypothetical questions. That's all I'm saying. That's the --

JUDGE PAINTER: Answer the question, Mr. Carr.

THE WITNESS: I'm not familiar with the books and records required in your proposed regulations. I may have read them. I have no accounting background. I would say that that's one of my weaker areas.

Q (By Mr. Levie) Does your firm employ accountants?

A Yes, we do.

Q Did you ever have occasion to discuss with your accountants the books and records required to be kept? Under Rule 32.7?

A I'm sure we discussed books and records. I would not make a statement we discussed all the requirements.

Q Did you ever discuss with your accountants the books and records required to be kept under Section 1.18 of the regulations?

A I don't have much recollection of that, Mr. Levie. I know the number 1.18 but I don't know what it covers.

Q Do you recall engaging in any conversations wherein the bookkeeping and record keeping requirements of Sections

1.18 or 32.7 were discussed in your presence?

A Record keeping requirements were discussed in my presence. I did take part in conversations that did cover that subject. I would not represent that the discussions completely covered everything required.

Q What did the discussions cover?

A I don't remember now.

Q When were they held?

A There were discussions when your auditors spent two complete days looking over our records and gave us a clean bill of health. There were discussions that I had prior to that with my own accountants, and discussions that I had subsequent to that time.

Q Let's start with the discussions you had prior to that with your accountants. What was the substance of those conversations?

A I said there are some regulations that involve bookkeeping. I think we should be in compliance with them. I would like to be in compliance with them. I'll correct that. And do whatever is necessary.

Q You told the accountants to do whatever was necessary?

A That's right.

Q Approximately when did that conversation take place?

A Some time in December.

Q Of 1976?

A Yes.

Q Who were the accountants with whom you had that discussion?

A The firm was Herbert Leviss and Son or Brother or something in New York City.

Q What actions if any were taken by Lloyd, Carr & Company with respect to record and bookkeeping requirements as a result of that discussion with your accountants?

A I don't really know, Mr. Levie.

Q What discussions did you -- what were you told by the Commission auditors in January of 1977?

A That our records were in very good shape. There was the customer transactions were very clearly and very well recorded. Some of the -- something to do with the journal or a ledger sheet or something had not yet been completed or done or something to do with that.

Q And who was present in that conversation? By whom were you told this?

A By the young lady sitting there, and another gentleman, a gentleman that she had with her.

MR. LEVIE: May the record reflect that Mr. Carr is referring to Ms. Chan.

Q (ByMr. Levie) What steps if any did you take as a result of the conversation with Ms. Chan and Mr. Purta, P-u-r-t-a?

A I don't think we took any steps as a result of that conversation. I think that whatever -- I would assume that our accountants knew what was required and they continued to prepare those -- whatever it was that was not complete.

Q Mr. Carr, why do you assume that your accountants took steps in that regard?

A Because when I pay somebody the kind of money they got I assume that they would do what they're supposed to do.

Q As president -- or as a partner, rather, of Lloyd, Carr & Company --

A Both, Mr. Levie.

Q Did you get back to those accountants and find out what steps if any were taken?

A I personally know we hired some additional bookkeepers, and they did their thing.

Q Well, in the course of doing their thing did they have occasion to report to you what the results of that were?

A No, I don't think so. I don't think so. I don't remember every conversation I had.

Q Is it your testimony today that Lloyd, Carr & Company is in compliance with the bookkeeping -- books and record keeping requirements of Section 1.18?

A I still don't know exactly what they are, Mr. Levie.

Q You've never read 1.18? Or do you recall ever reading 1.18?

A You keep trying to put words in my mouth. I may have read through it or over it. I did not make a study of it.

MR. HECHT: Your Honor, one preliminary matter.

Mr. Purta was required to be here pursuant to a Court Order. I excused him last night and he will be made available with respect to our rebuttal and you should know that.

JUDGE PAINTER: He will be here for your rebuttal.

MR. HECHT: No, what I'm saying is that there is a Court Order. He's not here, but I think I should explain to the Court that that is not a violation of the Court Order because I excused him.

I didn't feel --

JUDGE PAINTER: Well, let's go on with this examination then.

MR. HECHT: Excuse me for just a second.

Your Honor, the Court should know that they are now photostating the yellow sheets from 2/14/73 to 2/23/73 which I offered before.

JUDGE PAINTER: I appreciate the present diligence.

Mr. Levie.

MR. LEVIE: Your Honor, I am now handing to Mr. Carr what has been marked as Division Exhibits 9 and 9(a) for identification. I would note that Exhibit 9(a) is a xerox of 9, 9 being the original.

I would ask Mr. Carr to compaee the original and xerox copies and see if they are accurate. See if the xerox is a accurate reproduction of the original.

MR. HECHT: I don't have 9(a).

All you gave me was one.

JUDGE PAINTER: One moment, Mr. Hecht. He is having the xeroxed compared with the original.

MR. HECHT: Yes, Your Honor.

MR. LEVIE: I will furnish Mr. Hecht with a copy of 9(a).

JUDGE PAINTER: Thank you, Mr. Levie.

Mr. Hecht, you will be furnished a copy of the Exhibit 9(a).

MR. HECHT: Thank you.

MR. LEVIE: Your Honor, can we go off the record while Mr. Carr examines the two documents for their accuracy?

JUDGE PAINTER: Yes.

Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Levie) Mr. Carr, have you now had the opportunity to compare Division Exhibit 9 and Division Exhibit 9(a)?

A They certainly look identical, so I would say that they are.

Q Now, Exhibit 9(a) is an application for registration as a futures commission merchant in the name of Lloyd Carr Financial Company. Correct?

A Yes.

Q And this is the document that was submitted to the Commission on October 1, 1976. Correct?

A No, not correct.

Q I direct your attention, sir--

A Well, wait. I see a date on here of the 16th. And I see a receipt stamp of the 17th.

Q With the Court's permission, if I might direct Mr. Carr's attention to page 2 of 4 of Exhibit 9(a) for identification and ask you, sir, if there is a CFTC time stamp of October 1, 1976?

A There is.

Q Now, I ask you, sir, is Exhibit 9(a)-- Division Exhibit 9(a) the FCM application submitted by Lloyd Carr Financial Company to the Commission on October 1, 1976?

A I'm sorry. Is this the one submitted on October 1?

Q Is 9(a) an accurate xerox copy of the FCM application submitted on October 1?

A I would say that this is the application. Whether the information that is on here now was on it when it was submitted on October 1, I'm not prepared to say.

Q There came a time when Division Exhibit 9(a), as it was submitted on October 1, 1976, was returned to your company. Correct?

A Yes.

Q And that would have been sometime in mid-October, 1976. Correct?

A What do you mean it would be?

Q Well, do you recall when you received that application back?

A Not really.

MR. LEVIE: May I have this marked?

(The document above-referred to was marked Division Exhibit No. 10 for identification.)

Q (By Mr. Levie) Mr. Carr, I show you what has been marked Division Exhibit 10 for identification. And I ask you if you have ever seen Exhibit 10 before?

A I don't believe I have. Wait. Have I seen it-- ever seen it before?

Q Yes, sir.

A I saw it when Mr.-- I saw it-- I think Mr. Hecht mailed me a copy like this.

Q Of Exhibit 10, you mean?

A Yes.

Q When?

A January maybe.

Q There is no question, however, that you received an FCM application in the name of Lloyd Carr Financial Company-- let me rephrase that.

Sometime after October 1, 1976, you received back from the Commission an FCM application originally submitted in the name of Lloyd Carr Financial Company. Correct?

A Yes.

Q And it's your testimony that you never received a copy of Division Exhibit 10 accompanying the return of that application. Correct?

A I-- it's correct that I have no recollection of having seen this until Mr. Hecht mailed a copy to me.

Q And the October 1 application, can we agree it was returned to you sometime in October of 1976?

A I can't agree to that.

Q Well, it was returned to you at some point after October 1, '76 and before January 17, '77?

A Yes, Mr. Levie.

Q Approximately how long did you have that FCM application in your possession before it was filed again on

January 17, 1977?

A You're asking me the same question: how long did I have it? I don't remember.

Q Do you recall whether it was more than one month?

A Between-- you mean, did I have it in my possession for-- in our possession for a month before it was resubmitted?

Q Yes.

A Could be.

Q When you received the October 1 application back from the Commission, did you consult with anyone?

A You know, I didn't sign this application. Mr. LeMieux did. And he generally took care of things like this. I indicated to you yesterday what his functions were. And I dont think I did.

Q Mr. Carr, there came a time when you learned that the October 1 application had been returned to your company. Correct?

A Yes.

Q When you learned of that return of that application, did you consult with anyone?

MR. HECHT: Objection to the form of the question. What do you mean by consult?

JUDGE PAINTER: I think the question is quite understandable. Respond if you can, Mr. Carr.

THE WITNESS: Yes, I did.

Q (By Mr. Levie) With whom?

A Well, with Mr. LeMieux. And I caused a number of telephone calls to be made to the CFTC, asking what-- why the document was returned.

Q How did you come to learn that the document had been returned?

A Mr. LeMieux mentioned it. I believe it was Mr. LeMieux who mentioned it to me.

Q And when you say Mr. LeMieux, you're referring to Charles LeMieux III. Correct?

A Yes.

Q You just stated that you caused telephone conversation to be made to the Commission. Who made these telephone calls?

A I think it was Charles Lemieux. I think that I may even have made one.

Q With whom did you speak?

A Do you have a Mrs. or Miss Forbes there?

Q I'm informed there is such a person in our New York office.

A I seem to have that name in my mind.

Q Did you ever speak with an Allan Cooper?

A Yes.

Q When?

A I would say sometime between December 15 and January 15.

Q Why does the date December 15 ring a familiar chord in your mind?

MR. HECHT: Objection, to the form of the question. He said sometime between. He didn't say that specific date.

THE WITNESS: Let's say between the middle of December and the middle of January.

Q (By Mr. Levie) Did you have more than one conversation with Mr. Cooper?

A I believe I had one, but I'm not certain.

Q To your recollection, how is it that you recall the conversation was made between December 15 and January 15?

A Because I know it was somewhere between two and four or five weeks-- somewhere between one and four or five weeks before the January 17 date.

Q At the time you had the conversation with Mr. Cooper, you still had in the possession of Lloyd Carr Financial Company the FCM application which originally had been filed on October 1?

A Correct.

Q Did Mr. LeMieux tell you how many telephone conversations he had with personnel at the Commission regarding the October 1 application?

A I know he made a number-- he told me that he made a number of them, and that he could get no answer from the Commission as to why the application was returned.

Q Did he tell you with whom he spoke?

A No, I don't think so.

Q Mr. Carr, you knew in order to sell commodity options after January 17, 1977 the firm had to be registered as an FCM. Correct?

MR. HECHT: Objection to the form of the question. He's asking for a legal conclusion. The question-- that's the question before the Court.

JUDGE PAINTER: Sustained.

Mr. Levie, rephrase your question.

Q (By Mr. Levie(What was your knowledge, Mr. Carr, prior to January 17, 1977 regarding whether or not a person selling options had to be licensed with the Commission as of January 17 in order to legally sell options?

A I think that would also be a legal conclusion that I'm not prepared to make. I think the answer you want is that I knew that the CFTC had published a regulation which required-- which they said required anyone doing that be registered as an FCM.

Q And you knew that sometime in October or November of '76. Correct?

A I dont think we knew it when that application first went in.

Q When the application first went in on October 1, 1976--

A September 29, it was sent.

Q After the October 1 application was mailed to the Commission, you came to learn in October or November of 1976 that, in order to sell commodity options after January 17, the firm had to be registered as an FCM. Is that correct?

A I knew that that's what was in the regulation, Mr. Levie.

Q Once Mr. LeMieux reported to you that he was not getting an adequate response from the Commission regarding the reasons for the return of the application, did anyone from your firm fly down to New York to find out what was going on? With their application?

MR. HECHT: I'd like to object to the form of the question. It asked for facts not in evidence. And I don't see the relevancy.

JUDGE PAINTER: I consider it to be relevant. Just simply ask him if anyone did fly down there, Mr. Levie.

Q (By Mr. Levie) Did anyone in any manner go down to New York to talk with Commission personnel regarding the FCM application returned by the Commission?

A I don't believe so. I didn't know that it required a personal appearance to discuss it.

Q But you did know, Mr. Carr, that you had to be registered-- the firm had to be registered by January 17 in order to legally do business selling options--

MR. HECHT: Objection to the form--

JUDGE PAINTER: Mr. Levie, I think we've covered that. He is aware that the regulations required it, but he questions the validity of the regulations, apparently.

MR. HECHT: Your Honor, not only did he question them prior to their effective date, he caused his company to take action legally before the effective date. I dont think any connotation should be drawn--

JUDGE PAINTER: We're aware of that, Mr. Hecht.

MR. HECHT: It's a big difference if you do it after and do nothing, then do it before.

Q (By Mr. Levie) Mr. Carr, Lloyd Carr & Company brought legal action against the option regulations. Correct?

A Correct.

Q And thus you were challanging the legality of the option rules. Correct?

A Successfully, in a good measure.

Q While you were in the course of this litigation, and knowing that there was a registration date of January 17, did you come to decide not to file the application prior to the 17th of January?

A The reason it wasn't filed until the 17th was that we were unable to get any information from the agency as to why our application was returned. Without knowing if a deficiency existed or what it was, it was difficult to send it in. And it was finally after the conversation that you referred to that I had with Mr. Cooper, when we finally go some information, that what was needed was prepared or refused, and then sent in.

Q After the October 1 application was returned, and prior to the time the application was resubmitted, did Lloyd Carr Financial Company or Lloyd Carr & Company write to the Commission asking for reasons that the application had be returned?

A I dont remember signing any letter that went to them.

Q Did you come to learn whether or not any letter was sent to the Commission asking for reasons that the October 1 application was returned?

A I don't know, but I wouldn't know because until it got close to January 17 -- close in terms of a number of weeks -- I didn't really take care of this matter.

Q Who did?

A I told you. Mr. LeMieux.

Q What did Mr. Cooper tell you about the deficiencies in the application that had been originally submitted on October 1?

A Well,for one thing he told me that a social security number was required. And I delved and turned out-- turned up with a release from the CFTC that indicated that it wasn't necessary. Then he told me that some zip code numbers were missing. I think perhaps even a date, taht we were supposed to have put on the application, was missing.

Important.

At any rate, he also indicated that they needed another financial statement.

Q Did he say another, Mr. Carr? Or did he say a financial statement?

A I don't recall.

Q Didn't Mr. Cooper tell you that no financial sttatement had ever been submitted with the October 1 application, and that's why it was returned?

A No, I don't remember that.

Q Your recollection is that Mr. Cooper told you that you neede another financial statement. Correct?

A That was my impression.

Q What-- did he tell you what was deficient about the one you had originally-- that Lloyd Carr Financial had originally sent in?

A No. But I assumed that now it was outdated.

Q Why did you assume--

A It was as of the end of August.

Q Did you ask him whether they needed an updated financial statement?

A He said, Send it in with another applica-- with another financial statement. So what needed to be discussed about it? We finally-- we were glad to get an answer from them as to what they wanted.

Q Had you ever refused to accept or return, rather, telephone calls from Commission personnel in New York?

A Did I ever?

Q Yes, sir.

A Did I ever refuse to return, or did I fail to return?

Q Well, did you fail to return?

A I dont think so.

Q Did you ever refuse to return telephone calls from personnel of the Commission in New York?

A Only in the last couple of weeks when they started harrassing everybody in my place.

Q What do you mean by the last couple of weeks, Mr. Carr?

A Maybe the last month or so, five weeks.

Q Which month? Could you give us a time frame?

A The last month would be approximately from now, going back 30 or 31 days. Five weeks would be going back 35 days from today.

Q Mr. Carr, did you come to know that persons working for Lloyd Carr & Company or Lloyd Carr Financial Company had to be registered as associated persons with the Commission by January 17, 1977?

A Your agency changed that requirement so many times and in so many ways, it would have taken a genius to figure out what it finally was.

JUDGE PAINTER: Just give him a yes or no. You knew or you didn't know.

THE WITNESS: I didn't know at any time what you fellows really wanted.

Q (By Mr. Levie) Did you ever consult with anyone to find out what the Commission wanted?

A I have a capable attorney wiht whom I consulted frequently.

Q Did you consult with your attorney with respect to the registration requirements for associated persons?

A I think we tried to figure it out together. I still don't know.

Q Did you ever read, Mr. Carr, Section 32.3 of the option regulations stating that associated persons must be registered by January 17?

A I was aware of those contents, and before they went into effect, there was a release from the agency changing it.

Q In what respect did it change it, Mr. Carr?

A Oh, it let people who had their application in but they weren't passed on, they could sell up to a certain time in February. Then that was changed until March. Mr.

Levie, they're your regulations and you know them better than I do.

Q Mr. Carr, the release to which you refer came out after January 17, 1977. Correct?

A There was some release on January 13, Mr. Levie. And then there was all the-- the releases that came over Reuters that your agency was so dilligent in providing.

Q And did not the releases to which you refer, Mr. Carr, also note that the processing of AP applications takes 30 to 60 days?

MR. HECHT: Objection. A, it's not in evidence. And B, it's contrary to the actions of the staff in processing applications.

JUDGE PAINTER: Overruled.

Respond if you can, Mr. Carr.

THE WITNESS: My train of thought. Can I have the question again?

Q (By Mr. Levie) Yes, sir.

I believe in the last question and answer you were testifying to a number of releases that came out by the Commission and over Reuters with respect to the registration dates for AP applications being filed. And I then asked you, sir, if you recall reading in any of those releases that the normal processing time for an AP applications takes 30 to 60 days?

A You know, I remember one of the releases that said they were being processed within three weeks. I've seen the figure 30 to 60 days.

Q The release that said they were being processed in three weeks, do you recall whether that was a Commission release?

A I think that it came from your public information office.

Q Did Lloyd Carr keep a copy of that release?

A We may have.

Q Was it at your instructions, Mr. Carr, that the employees of Lloyd Carr were told to register or fill out applications for registration as associated persons?

A No. That would be at Mr. Labus's-- he was taking care of that.

Q Do you know when that instruction was issued by Mr. Labus?

A The instruction that account executives working in our employ send in their applications?

Q For registration as APs, yes, sir.

A I am under the impression, Mr. Levie, that they started to send their applications in sometime early in December. I'm not certain.

I know that a large number of them were sent out the second week in January. And they're going out on a continuing basis from then on.

MR. HECHT: Your Honor, while they're taking a break, I have for the court the originals of the confirmation slips from that February 14 through February 23. And plus the copies for the division.

I also have in here I believe-- this is the copy of the purchase journal which is another document that's requested.

JUDGE PAINTER: In about 15 minutes we'll have a short recess. Why don't you go over those with Mr. Levie during that period of time?

MR. HECHT: This is for you to review and compare--

JUDGE PAINTER: I want to listen to the witness right now.

Proceed, Mr. Levie.

Q (By Mr. Levie) Mr. Carr, the second week of January would be the week of the 10th through the 14th. Is that the week that you believe those applications were sent in?

A Yes.

Q How do you know that they were sent in?

A Well, my office is very near to the entrance to Lloyd Carr. And I could-- that's sort of a communications center for the company. And I remember considerable discussions and the dispatching of messengers, and so on and so forth.

Q Did anyone tell you, Mr. Carr, that the applications were now being mailed into the Commission?

A I thought they were delivered.

Q Did anyone tell you that the applications for the APs were now being delivered to hte Commission?

A I was-- I was aware that they were going out. I don't remember who told me or what or how.

Q Were you told whether they were to be delivered at the New York or Chicago offices of the Commission?

A No, I have no knowledge of that. And I still don't know where they should have been.

Q These AP applications that were sent out in January of 1977, were a group of those sent out in bulk, consisting of 38 applications?

MR. HECHT: Your Honor, I'm going to object. I thnk he's badgering the witness. He's already testified he didn't handle it. He's identified the gentleman who did handle it for the company.

THE WITNESS: Let's find out. It's a simple yes or no answer.

THE WITNESS: Do I know if 38 went out? No, I dont.

Q (By Mr. Levie) Mr. Carr, you came to sign a check that accompanied these applications, did you not? These AP applications.

A Well, since I'm-- itwould either be me or Mr. LeMieux who would have signed the check. Or probably both of us.

No, it would be me. For that account, I'm the only signator.

Q To which account are you referring , Mr. Carr?

A I think that was drawn on the Connecticut account that you succeeded in having the bank close for us.

JUDGE PAINTER: Let's not volunteer so much information, Mr. Carr.

THE WITNESS: Yes, Your Honor.

MR. HECHT: Mr. Carr, if there is anything, I have the opportunity to ask you the questions during cross. In addition, on rebuttal I have the opportunity to ask further and into further areas.

MR. LEVIE: I'd like these marked, please.

(The document Above-referred to was marked Division Exhibit No. 11 & 11(a) for identification.)

MR. LEVIE: Mr. Carr, I now hand you Division Exhibits 11 and 11(a), which is a xerox copy of Exhibit 11. I'll ask you to compare the xerox copy with the original, and determine if the xerox is fair and accurate copy of the original.

THE WITNESS: It is.

Q (By Mr. Levie) Could you tell us what the purpose of the check, which is Exhibit 11(a) -- if I might refer to the xerox copy -- was?

A It says AP fees.

Q And it's made payable to the Commodity Futures Trading Commission?

A Correct.

Q And the date on the check is January 1-- is January 20, 1977. Correct?

A That's right.

Q Is that the date you signed that check?

A I would say so.

Q And that was the check that was sent in to cover the registration fees of the 38 applications, AP applications. Correct?

A Wrong.

Q. What was the purpose of Exhibit 11(a), sir?

A In error the applications were sent in without the check. And the check, as I understand it, was delivered sometime later.

Now, that's my understanding of it.

Q From where did you get that understanding?

A As we're talking, I recall that a Jack Cosulich from our firm called our bookkeeper and asked for a check. Wait a minute. All right, here's-- the applications went in in error without a check. He called and that a check had not been enclosed, that he had a couple of signed checks in our Greenwich office. Would he be permitted to fill it out and forward it to the agency?

And he was told that he could.

Q Who delivered those AP applications?

A I think it was Cosulich. Or it could also have been the girl who worked in the office, who handles-- one of the secretaries in Greenwich.

Q And what is her name?

A You mean the name of the person who it might have been? It might have been a Jane Wilson, or a Jack Cosulich. I would say it was probably one of those two.

Q How soon after the applications were delivered in New York did you come to learn that a check had not accompanied them?

A I knew it a couple of days later, within a week.

Q On or about the 20th?

A I would say that I certainly knew it on the 20th.

Q And there came a time when the check that you had issued on the 20th for $760 was not honored by the Greenwich bank. Correct?

A Yes, because you succeeded in having them close that account and send us back $142,000.

JUDGE PAINTER: Mr. Carr, Mr. Hecht I'm sure will bring this out on cross.

THE WITNESS: I'm sorry, Your Honor.

Q (By Mr. Levie) Did there come a time, Mr. Carr, when another check was issued to the Commission?

A In this matter?

Q With respect to the AP applications.

A We-- we became aware of it not through the Commission. The agency didn't notify us. They, instead, sent letters to the various applicants. And when we first got information, we looked at the bank statement and determined that the account -- if I may say it -- had been closed. And we purchased a sufficient number of $20 money orders to equal that amount.

They were distributed to the applicants. Those who had sent their own $20 check to the agency made out the $20 money orders to themselves as reimbursement for it. And those who hadn't, or those who hadn't received notice, made them out to the agency and sent them on in directly.

Q Mr. Carr, who was-- how many of the persons employed by Lloyd Carr & Company have been registered as APs with the Commission to date?

A How many have heard that they've been approved?

Q Yes.

A I have no knowledge of that. I dont know.

Q Who would know?

A The brokers would know.

Q Have you ever had occasion to inquire of anyone in your employ how many of your account executives had been approved as APs?

A No.

Q When the check was returned from the Connecticut bank, did this come to your attention?

A I thought I just covered that. I-- one of the brokers-- whether it was one broker or two or three or five, I don't know if they all got these notices on the same day. Or if one got one.

But it-- it-- it-- it did come to my attention that this is what happened. As I said a moment ago, the bank balance, the bank statement-- cut off statement from the bank or the closing statement was examined. It was determined that the $760 check had not been deposited in any sort of timely fashion by the agency, but rather had been held for a number of weeks, I believe. And that it had not been deducted from the bank balance. So then we knew what had happened.

Q I direct your attention, sir, to the back of Division Exhibit 11. And it's a date of February 2, 1977.

Do you have any memory of how long the Commission held the check before depositing it?

A Well, I see nine days here.

Q Now, once you found out what was happening with your brokers--

A That's only the deposit date. It might have taken another four or five days to reach that bank.

Q Once you found out from your employee that their applications-- that there was a problem in the payment of the registration fee with their applications, did you take any--

MR. HECHT: Objection to the form of the question. I'll cut it off right here. The questions and the answers speak for themselves. I don't think you can classify it as his problem.

JUDGE PAINTER: State the question again, please, Mr. Levie.

Q (By Mr. Levie) Mr. Carr, there came a time when you found out that the applications for certain Lloyd Carr employees for registration as APs had been returned to the employees. Correct?

A To some of the employees, yes.

Q And the problem you came to learn was the check sent in with those applications -- for whatever reason -- had not been paid. Correct?

A Correct.

Q And since you knew that one check had gone in with all 38 applications, you knew at some point that all 38 applications were unacceptable to the Commission. Correct?

A Correct.

Q Now, once you obtained that information, what steps -- if any -- did you take to assure-- well, what steps if any did you take?

A I just told you, Mr. Levie. We purchased a quantity of $20 money orders at the bank, distributed them to the 38 brokers who were covered by that check. Some received a kind of a frightening letter from the CFTC that if they didn't return it within three days, that they would have--the applications would not be acted on. And some had sent their own checks to the agency.

The brokers were instructed that those of them who had sent their own checks to the agency were to make out these $20 money orders to themselves. Those who had not yet complied with the agency request to send the money in again, made those money orders out directly to the agency and sent them individually.

Q Who issued those instructions?

A I believe that our national sales manager and director of marketing consulted with me. And brought it to my attention.

Q Did you ever tell the account executives employed by Lloyd Carr to continue soliciting option orders if even though their applications for AP registration had not yet been accepted and processed by the Commission?

A I don't think that I ever discussed it specifically with any of the brokers.

Q Did you ever hear that discussed wiht any of the brokers?

A I can't say that I have-- that I did.

Q Did any of your hierarchy of managerial personnel come to you and say, Mr. Carr, I've just told our account executives not to worry about what the problem is with their cations, just to keep on selling options. Or words at effect?

A I was aware-- maybe this will help. I was aware that, at that time-- by that time, the applications had not been processed. I was aware that the brokers were soliciting option business. And I was aware of a number of letters and amendments and publicity releases that had come from the Commission that did nothing but confuse me, and everybody else in my company who read them. We had no idea where the regulations stood then, or stand now.

And I made no objection to their selling. And I was-- I would have been in a position to object.

MR. LEVIE: Your Honor, at this time, might we take a five minute recess?

JUDGE PAINTER: I think that's a pretty good idea. Off the record.

(Short recess.)

JUDGE PAINTER: Back on the record.

Mr. Hecht (sic), you've got 10 more minutes and then we're going to recess until Tuesday morning either in New York or Washington.

MR. LEVIE: With all due respect, Your Honor, I think my name is Levie.

JUDGE PAINTER: Mr. Levie, I do apologize.

MR. HECHT: Shucks, I thought you were paying him a compliment.

(Laughter by all parties.)

Q (By Mr. Levie) Mr. Carr, there came a time when an application for registration as an FCM in the name of Lloyd Carr & Company was filed with the Commission?

A That's correct.

Q And that application was received by the commission on January 25, 1977. Correct?

A Yes.

Q Directing your attention to January 20 and 21 of 1977, Commission personnel came to the office of Lloyd Carr to perform a pre-registration examination. Correct?

A That is correct.

Q And the commission personnel who came were Miss Chan, who is here today, and a gentleman by the name of Bernard Purta. Is that correct?

A Tall, thin gentleman with light colored hair. I'll accept that it's Mr. Purta.

Q Did you have occasion to meet with the Commission personnel on January 20 and 21?

A I did.

Q And did they explain to you the nature of their visit?

A Yes.

Q What were you told?

A I was told in advance. I received a phone call from a-- on the-- one the 18th, which was a Tuesday, I received a phone call from the agency indicating that they would come up and do a pre-registration audit. Without my asking, he-- the guy apologized for not being able to come up on Wednesday the 19th. But that they would be there early in the morning of the 20th.

Q The application that was filed on the 17th of January was in the name of Lloyd Carr Financial Co. Correct?

A Yes.

Q And that is Division Exhibit 9(a) which you have in front of you. Correct?

A Yes.

Q How was Exhibit 9(a) delivered to the Commission?

A I think it was delivered by Mr. Cosulich, or slipped under the door-- no, no. Wait a minute.

Q Perhaps we can short cut--

A I think it was hand delivered by Mr. Cosulich.

Q Can you agree that it was received by the Commission on the 17th of January? of '77.

A Well, it left our office a day or two earlier.

Q Would you tell us what Miss Chan told you during her visit of January 20 and 21?

A That there was no question that we met-- but that we met the financial requirements. And that I would-- I could call the Commission on Monday morning, the 24th, at around 10:00 and "get the good news".

Q Do you recall her exact words?

A Well, I would put quotes around "get the good news".

Q I mean, do you recall her exact words about the meeting of the financial requirements?

A Well, it was a continuing discussion and I dont remember. There must have been several hundred or a thousand words involved.

Q Well, did she tell you you satisfied the minimum financial requirements? Did she say you met the $50,000 limit--

A Oh, far in excess of that, Mr. Levie.

Q Who else was present during this conversation with you and Miss Chan? When she advised you about meeting the financial requirements.

A Our accountants were there.

Q And who are they?

MR. HECHT: Objection. That's been asked and asnwered.

THE WITNESS: From Herbert Leviss and Company.

MR. HECHT: I-- give him the name of the individual, if you know, who was there.

THE WITNESS: Irwin Winston.

Q (By Mr. Levie) Was anyone else present during that conversation?

A That's-- that I don't know. There were several conversations, Mr. Levie, to that effect.

Q Well, did Miss Chan tell you on several occasions during the 20th and 21st that Lloyd Carr met the financial requirements--

MR. HECHT: Objection. Asked and answered.

JUDGE PAINTER: Overruled.

Answer if you can.

THE WITNESS: She did on many occasions, the there was never the slightest question about it.

Q (By Mr. Levie) Mr. Carr, was there ever an occasion when Miss Chan told you that Lloyd Carr met the financial requirements, when there were persons in addition to you, she and Mr. Winston present?

A I dont know who was in. It took place in our conference room. There were people coming and going from time to time with records, with xerox copies of things that they had asked for and that we permitted them to make copies of.

I remember a particular incident where there was $10,000 cash on the premises. And she indicated that it was not necessary to-- for us to include that because it wasn't needed to meet the financial requirements.

Q You say there was $10,000 in cash?

A I said that.

Q Did you count it?

A No.

Q Did you hear your accountants tell her how much cash was on hand?

A Yes.

Q What did they tell her?

A We presented her with two envelopes that were dated and sealed. And asked her if she would like to open them and count the money.

She she it wasn't necessary. It's not needed to meet the financial requirements. And I said okay.

Q But my question was, did you hear anyone tell Miss Chan how much money was in those envelopes?

A I heard myself tell her.

Q And what did you tell her? $10,000?

A That's right.

Q Was Mr. Winston present when you told her that?

A Yes.

Q Was anyone else present when you told her there was $10,000 in those envelopes?

A Not-- I don't know. Mr.-- yes, the other chap that was with her was there.

Q If we might--

A And Mr. Brien knew it also. And Mr. McCarthy knew it. That she had seen the envelope, accepted the fact that there was $10,000 in there, and hadn't needed to include it.

Q How did Mr. Brien know it?

A Because he had a conversation with me about it two days later.

Q And you told him there was $10,000 in--

A He told me.

Q And what about Mr. McCarthy? How did he know it?

A He knew it when I called, not having heard from the-- not having heard from them as promised, Monday morning. We discussed some of the-- we discussed really why I hadn't heard. And then he said, WEll, I dont know. It has to do with Washington.

Q But did the question of the $10,000 come up? That's the only thing that's pending right now.

A Well, it didn't come up. It wasn't included. And that was the end of it. And I didn't object.

Q If we might just step back a moment. There was a question as to whether anyone else was present when Miss Chan-- on the occasions Miss Chan told you that Lloyd Carr met thefinancial requirements.

A I think Mr. Brien was present.

Q Do you recall the names of any other individuals who were present during any of these conversations?

A How many times, Mr. Levie?

MR. HECHT: I'll state the objection.

JUDGE PAINTER: There's only one more minute, so let us wind it down to the end.

Go ahead, Mr. Levie.

Q (By Mr. Levie) You-- do you remember the names of any other individuals who were present?

A I mentioned Mr. Winston.

Q Besides Mr. Winston and Mr. Brien.

A I've mentioned this other chap who was there on and off.

JUDGE PAINTER: You're referring to Mr. Furta?

THE WITNESS: Yes. I am.

Q (By Mr. Levie) Did you--

A I'm not saying that he was in there constantly. He was running back and forth to our xerox machine. WE had given him permission to copy any documents that he had wanted. He was doing that.

Q Did you tell Miss Chan on Januayr 20 that option orders were not being filled because Lloyd Carr was not registered as an FCM?

A I said that we had held the orders for three days or so because we didn't want to place them until we had been registered. And her reply was, well, that should be only another day or two.

JUDGE PAINTER: That will be the last question, Mr. Levie, for this session.

Did anyone want to move into evidence the documents that have been identified? Or do you wish to reserve that for next Tuesday?

MR. LEVIE: At this time I would move in Exhibit 9(a), and 11(a). Which are xerox. And we would ask leave of the Court to submit the xerox copies in lieu of the originals.

JUDGE PAINTER: What about 10?

MR. LEVIE: I dont think it's appropriate to offer it at this time.

MR. HECHT: Which is 10?

MR. LEVIE: I believe it's the letter from Mr. Cooper to Mr. Carr.

JUDGE PAINTER: Any objections to 9(a) and 11(a)?

MR. HECHT: Just one problem. 9(a), is that the amended application? Or is that the copy of the original application?

MR. LEVIE: It was the same. It was returned and resubmitted by Mr. Carr. Physically, it's the same application.

MR. HECHT: I would like a copy of 9. I've never gotten 9 from you.

MR. LEVIE: Your Honor, he's holding 9 in his right hand.

MR. HECHT: Then I've never gotten 9(a).

JUDGE PAINTER: Well, 9(a), as I understand it, Mr. Hecht, is simply a xerox copy of 9.

MR. HECHT: I don't know what the difference is between them, but there must be a reason. Why shouldn't he move in-- I would like 9--

JUDGE PAINTER: I assume that he is not offerring into evidence the original. Is that correct?

MR. LEVIE: Yes, sir.

MR. HECHT: We think--

JUDGE PAINTER: Mr. Carr has testified that they are the same. I am admitting them into the record, 9(a) and 11(a).

(The documents, heretofore marked Division Exhibits Nos. 9(a) & 11(a), were received in evidence.)

MR. HECHT: I'd like 9 admitted into evidence, also.

JUDGE PAINTER: I'm admitting in at this time 9(a) and 11(a), Mr. Hecht.

Does that conclude the business for the day?

MR. LEVIE: With the exception of certain discussion regarding documents, Your Honor.

JUDGE PAINTER: I'm goingto have you discuss those with Mr. Hecht after we go off the record. And then I will have the weekend to consider what course of action to take on my own.

MR. HECHT: Your Honor, I have certain additional documents to give them. One is a copy of the purchase blotter, which is-- well, here is it.

The other is the copy of those documents for that seven day period that they were complaining about. Here are the originals, and here are the copies. If someone wants to check them, the originals we'll give to you to review. There are not that many--

JUDGE PAINTER: I'm not going to look at them at this time, Mr. Hecht. If you want to go over these with Mr. Levie after we recess the hearing, you may.

Off the record, Mr. Reporter.

(Whereupon, at 12:20 p.m., the hearing was recessed, to reconvene on Tuesday, March 15, 1977 in New York City.)

314-434 (6)

COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

JAMES A. CARR and CHARLES P. LE MIEUX III
d/b/a LLOYD, CARR & CO., A PARTNERSHIP
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

LLOYD, CARR FINANCIAL CO.
84 STATE STREET, BOSTON, MASSACHUSETTS 02109

JAMES A. CARR

CHARLES P. LE MIEUX III

Respondents

No. 77-6

Room 1110
John McCormack Post Office and
Federal Building
Post Office Square
Boston, Massachusetts

Tuesday, March 15, 1977

The above-entitled matter came on for further hearing pursuant to Adjournment, at 10:00 a.m.

BEFORE:

Honorable GEORGE PAINTER, Administrative Law Judge

APPEARANCES:

RICHARD LEVIE, Esq., CFTC, 2033 K Street, NW, Washington, D.C. 20851; appearing on behalf of the Commission.

APPEARANCES (Continued):

CHARLES HECHT, Esq., and HAIG COSTIKYAN, Esq.,	Law firm of Charles Hecht, 60 East 32nd Street, New York, New York 10017; appearing on behalf of the Respondents.
G. LAMAR CRITTENDEN, Esq.,	Law firm of Barrett & Lamont, 65 William Street, Wellesley, Massachusetts 02181; appearing on behalf of the Respondents.

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James A. Carr (resumed)	325	---	---	---
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EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
Division's:		
DX-12(a) - (f)	341	344
DX-13(a) - (d)	342	344
DX-14(a) - (b)	343	344
DX-15(a) - (x)	332	338
DX-16(a) - (f)	354	354
DX-17	358	---
DX-18(a) - (f)	360	---
DX-23	368	---
DX-24	374	---
Respondent's:		
R-9	413	---
R-10	413	---

PROCEEDINGS

10:10 a.m.

JUDGE PAINTER: On the record.

We will proceed now with the hearing in the matter of James A. Carr and Charles P. LeMieux III etc., Case No. 77-6. Are there any statements to make before we proceed with the hearing, Mr. Levie?

MR. LEVIE: No, Your Honor.

JUDGE PAINTER: Mr. Hecht, do you have any statements to make?

MR. HECHT: Yes, I have with me and I will get out the motion with respect to the interlocutory appeal.

JUDGE PAINTER: If you will bring that up at a break, Mr. Hecht, I've already ruled on the matter and I will be very happy to take care of that after--

MR. HECHT: Okay. Let me give the Staff its copy that they are entitled to--actually be served with two copies. The reason it's a little unclear is it was quipped up from my office.

JUDGE PAINTER: Fine. I believe we were hearing testimony from Mr. Carr. Would you step forward, please, Mr. Carr?

Whereupon,

JAMES A. CARR

was called as a witness by and on behalf of the CFTC, and having first been duly sworn, was examined and testified as follows:

JUDGE PAINTER: Mr. Levie, would you like to continue your examination?

MR. LEVIE: Your Honor, in regard to Mr. Carr's testimony, I ask what the latest status is on the introduction of documents?

JUDGE PAINTER: Any comments, Mr. Hecht?

MR. HECHT: I believe we brought up last week the balance of those yellow slips from the 14th to the 23rd of February. I have them here. And I also have another document from Mr. Shuster for you that you wanted to admit as an exhibit, the Nick Jones card.

JUDGE PAINTER: Do you need some time to go over these off the record, Mr. Levie?

MR. LEVIE: I will--the option forms, Your Honor.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Mr. Levie, you have been given additional documents by Mr. Hecht. Are you satisfied that the subpoenas have been complied with?

MR. LEVIE: No, Your Honor. The documents which you supplied, which apparently purport to be the confirms and option order forms from February 14 through February 23, the same objections I made last week as to the striking out of the customer's name, the illegible writing on here; part of these forms are cut off at the bottom so that we can't see who signed for funds authorized, which in some cases would be Mr. Carr himself. And--

THE WITNESS: Never has it--

JUDGE PAINTER: Mr. Carr, Mr. Levie has the floor.

Mr. Levie, I want to make this clear for the record. You did indicate that you would not refrain from calling customers if those names were left on the information supplied to you?

MR. LEVIE: My understanding was, Your Honor, you ordered me not--to refrain, but you ordered him to produce, and I was prepared to abide by the Court's order.

JUDGE PAINTER: You will abide by the order not to contact any customers of Lloyd, Carr during the time that I am presiding over this evidenciary hearing.

MR. LEVIE: Over the objection of the Division, we will abide by any order of the Court.

JUDGE PAINTER: Yes, you would object, but you would comply.

MR. LEVIE: That;s correct, Your Honor.

JUDGE PAINTER: I want to make that clear for the record. Now, Mr. Hecht, you've heard the comments of Mr. Levie--

MR. LEVIE: Excuse me, Your Honor. May I take all these at once, just finish, with respect to the subpoened-for document?

JUDGE PAINTER: All right. Go ahead.

MR. LEVIE: With respect to a one-page sheet dated December 31, 1976, which has been referred to as a trial balance, I am informed by our accountant that this is unacceptable. It is not, in fact, a trial balance. Again, we have not seen the original. We don't know how this was prepared and by whom. There's no method of checking the accuracy.

With respect to the six-page document, called "Option Purchase--", again the same problems. WE don't know who prepared it. We haven't seen the original. There's no way of attesting to the accuracy. There's no date of the entries from this Purchase Journal for when the orders were placed.

Your Honor, one of the allegations or one of the defenses put forth by the Respondents in this case is that they are fit to be registered--do business--in complying with the rules and regulations. I think in order to accurately assess whether there has been past violation of the book and record-keeping requirements, and also to assess whether there is present compliance, and whether in that regard they are fit to be registered, as they claim, we should have access to the original documents asked for in items 3, 4, 6, 7, 8 and 14 of our subpoena.

JUDGE PAINTER: Thank you, Mr. Levie. Mr. Hecht?

MR. HECHT: Your Honor, with respect to the initial comments of Mr. Levie, very carefully prescribed, was not during this hearing. It is my position it is a matter of law, if they violate your order, we have no recourse. They cannot be held in contempt of an Administrative Law Judge's order. Your sole remedy would be to exclude them from the hearing. We have, as you know, had, and the evidence came out, they surreptitiously attempted to gain access to Lloyd, Carr, misrepresenting what they were coming up here for the second time around on the order. Other people dealing with this Agency have had serious problems, one of which is the subject of a pending suit in New York, with the Division of Enforcement destroying customers. My feeling is, they have jurisdiction before Judge Tauro and they know it. There is an appropriate Federal remedy for them, and it's been my position all along that they should subpoena us and, pursuant to the Federal Court action, we will have a hearing before Judge Tauro, and he will place reasonable limitations; and if they violate those limitations, they can then be held in contempt and appropriate penalties. Absent that, it's a meaningless remedy.

The second thing is, the important point here is the books and records. We're willing to show them to the Court in camera to compare with the copies which have deleted the names of the persons.

Thirdly, Lloyd, Carr and Co. is not being accused of dealing in naked options. And I think Mr. Levie can tell this tribunal, as well as the Staff which did the audit, that, in fact, and they've even alleged that Lloyd, Carr does purchase the options on the ICCH and the LMA. They are not dealing in naked options.

With respect to the specific items on the order purchase journal, we will bring up the original so you can compare the copy given to Mr. Levie. It's a photostat. All we have done is cover the names. And because the date happens to be first, the date on some of them got covered. It's a long ledger and it's a very simple matter to see that they are the same. We voluntarily offered to give the Staff, though not alleged in the subpoena and not attached, is the Rudolf Wolf confirms and the month-end statements of Rudolf Wolf.

I should point out that we are giving these, but specifically reserving our objection, stated on the record that the subpoena was not properly or timely served, nor has there yet even been a ruling on our written motion to the Commission with respect to the subpoena. But we're here.

We will produce them, subject, of course, to reserving our rights to their admissibility. As far as the trial balance goes, at the lunch break I will check back at the office to see who has the underlying data with respect thereto, whether the company does or whether the accountant does in New York. If the accountant does in New York, I'll have it sent up if they feel it's that appropriate.

The general ledger--the only two items, which we are now going to furnish soon is Cash Disbursements Journal, through February 23rd, and the General Ledger, through February 23rd. With respect to Wai-Mon Chan's requesting books of original entry in all journals and ledger, well, then, in effect, our stipulation on the subpoena is no good, because that is, in effect, requesting all the items that we agreed not to produce. Then, why are we going through this exercise? This was worked out in the spirit of compromise. We agreed to certain items, and you just don't change in the middle of the hearing.

JUDGE PAINTER: Thank you. I have a strong tendency to do some editorializing, but I will restrain myself.

Now, Mr. Levie, would you continue examining your witness?

MR. LEVIE: One further preliminary matter, Your Honor. As I understand, when we went off the record on Friday, it was the Court's ruling, at Mr. Hecht's request, that the hearing would reconvene this morning in New York, and I think that the record should reflect that at the request of Mr. Hecht's associate, the hearing was requested--it was requested that the hearing be reconvened in Boston today.

MR. HECHT: Well, for two reasons. It was originally New York, and on further thought, since Judge Tauro has retained jurisdiction, it would be inconvenient for all parties, if a problem should come up and we are in New York, and then we have to adjourn the hearing for a whole afternoon to come back to Boston. As I understand, Judge Painter, he would like this hearing to move as expeditiously as possible, and if we have that kind of problem, I don't want to then say, "Let's all get in the plane and fly up to Boston."

JUDGE PAINTER: All right. Now, let's begin with this hearing "as expeditiously as possible."

Mr. Levie?

DIRECT EXAMINATION CONTINUED

Q (By Mr. Levie) Mr. Carr, is it accurate that one source of income from Lloyd, Carr and Company is from the sales of options to members of the public?

A Yes.

Q Does Lloyd, Carr and Company have any other sources of income other than sales of options to members of the public?

MR. HECHT: Objection. That's been asked and answered.

JUDGE PAINTER: Well, restate your answer, Mr. Carr. I can't remember what it was.

THE WITNESS: Okay. At the present, that is our only source of income.

Q (By Mr. Levie) With respect to Lloyd, Carr Financial Co., is one source of income for that company the sale of commodity options to members of the public?

A Yes.

Q Does Lloyd, Carr Financial Co. have any source of income other than sales of options to members of the public?

A No, it doesn't. But getting back to the question you asked a couple of minutes ago, there is a bank account of Lloyd, Carr and Company that has nothing to do with the company. When we functioned solely as Lloyd, Carr Financial I used that particular account as my own personal account. Any income that I received from other sources, any personal bills that were paid, I treated that account as it was--the company was then a sole proprietorship--I treated that account personally. I paid my home phone bills from it, whatever income I had from other sources, I put directly in that account. It had nothing to do--and no company bills were paid out of it and no company income came into it.

Q So no customer funds went into that account?

A I would say that's the case, yes. Now, there may have been a mistake and there may have been an exception, but these were balanced out. There were some occasions when the company did not have money and I, out of my personal account--this was when we initially started--Lloyd, Carr Financial didn't have sufficient funds, perhaps, to pay a bill or a commission, and I laid the money out of that account and, in turn, shortly thereafter got money back which I put into that account. There may have been, going back a long way, an error in a deposit of a customer's check into that account, but then it was then exchanged out and put into the proper account.

Q Lloyd, Carr and Co. and Lloyd, Carr Financial Company maintained accounts at the United States Trust Company here in Boston, correct?

A Yes.

Q Were customer funds placed into those accounts?

A Yes.

Q Mr. Carr, last week you testified that you received money from Lloyd, Carr Financial Company. Did you also receive money from Lloyd, Carr and Co.?

A I testified that I received money from--?

Q Lloyd, Carr Financial Company?

A I didn't say that, Mr. Levie. I said that some funds of that partnership were used to pay personal--were for personal expenditures.

Q By your reference to payment of personal expenditures, is it your testimony that all money you received from Lloyd, Carr Financial Co. was used to pay expenses, as opposed to being placed in either a bank account or some other investment, or even in a checking account?

A All the money was placed in a checking account, Mr. Levie, as you well know. I am telling you that it's my understanding that a sole proprietorship and an individual are the same, as opposed to stockholder is employed by a corporation.

Q I think, Mr. Carr, that we're talking about Lloyd, Carr Financial Co., which is a partnership?

A That is a partnership. That's correct.

Q So the question is--to monies you received from the partnership?

A Came out of the partnership, yes.

Q And the money was paid to you by virtue of your being a partner in that company, correct?

A Well, if you say "paid" or not, it was--we received money out of it.

Q With respect to the tax year, 1976, have you filed a Schedule C for profit or loss in the sole proprietorship?

MR. HECHT: Objection, on two grounds; A, it's not an issue here, and, B, such a document isn't required until April 15, 1977. And C,--

JUDGE PAINTER: I'm inclined to sustain the objection, but I'll get comment from you, Mr. Leivie, before I rule.

MR. LEVIE: The ground, Your Honor, is that Mr. Carr has taken the position that Lloyd, Carr Financial Co. and Lloyd, Carr and Co. are basically the same company. If that's the case, the manner of tax forms filed, i.e. whether a partnership or sole proprietorship, or both, would have probative value as to what type of entity, in fact, it was or whether it was two entities.

JUDGE PAINTER: Mr. Levie, I'm a little reluctant to get into the field of tax business. I will sustain the objection. People tend to do some funny things on tax forms that maybe don't have too much relevance to reality.

MR. LEVIE: Very well, Your Honor.

Q (By Mr. Levie) Mr. Carr, are you acquainted with the--- let me rephrase that. In the course of the option business of Lloyd, Carr and Company, do you have occasion to see the orders that are placed with the carrying broker for purchase options?

A Are you discussing the period from January 17th through February 23rd, 1977?

Q Yes, sir?

A Do I have occasion to see the orders that are placed with brokers? Occasionally, I do, but not as a matter of practice.

Q But since January 17th and February 23rd, you have had occasion to see some such orders, correct?

A Indeed , I have.

Q By virtue of your position with Lloyd, Carr and Company, do you have to approve the placement of customer orders?

A No.

Q Do you review, on any periodic or even sporadic basis, the placement of orders of Lloyd, Carr customers with the London brokers?

A The placement with the London brokers? Yes, and-- from the 17th on? Perhaps two or three percent of the time.

Q Do you keep abreast of how much business Lloyd, Carr and Company is doing?

A I surely do.

Q How are you informed?

A I get daily figures.

Q From whom?

A From our bookkeeper.

Q What type of figures do they provide youwith; are they orders placed, monies received or what?

A They're both. There's a cash received, which makes an order really an order, and there are orders written. I get them by day, by week, by month--by the branches.

Q And this has occurred from January 17th actually through the present, hasn't it?

A Yes, it has.

Q You've indicated last week that you signed on some occasions Part 2 of what has been marked as Division Exhibit 8 for identification?

MR. HECHT: Objection, to the form of the question. I believe that the prior question had to do with a specific time period and I think you mischaracterized his answer.

JUDGE PAINTER: Let us bear in mind then that we're talking about this period, January 17th to February 23rd.

MR. LEVIE: Very well, Your Honor.

THE WITNESS: Would you ask the question again, Mr. Levie?

Q (By Mr. Levie) Between January 17th and February 23rd, have you had occasion to sign Part 2 of Division Exhibit 8 in any quantity?

A Yes.

Q Approximately how many?

A I don't know, Mr. Levie. A considerable amount. This is not an order, really; this is a contract. And I signed this contract on behalf of the company.

Q The contract to which you refer is , in effect, an indication that the option has been purchased for the customer, correct?

A Yes. Post facto. After it's been done.

Q After the order has been placed?

A Yes, been placed with us and purchased by us for the customer.

Q In London?

A In London.

Q We've also talked last week about these yellow option order forms, correct?

A Yes.

Q Have you had occasion to place your initials or name on any of those yellow option order forms from January 17, 1977, until the present?

A I don't believe so, Mr. Levie. There might be a single exception of that order, but I don't believe so.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Levie) Mr. Carr, I'm handing you a group exhibit, which is marked Division Exhibit 15(a) through 15(x) for identification.

(The document above-referred to was marked Division Exhibit 15(a) through 15(x) for identification.)

During the break, have you had occasion to review

Exhibit 15(a) through 15(x)?

A Yes.

Q Did you have an opportunity to review them with counsel? Your counsel?

A No. I guess I didn't.

Q Directing your attention to Exhibits 15(a) through 15(x), do your initials appear on any of those documents?

A Yes, they do.

Q Would you, by Exhibit number, such as 15(a) or 15(b), tell us on which pages your initials are placed? On how many forms on each page?

A You want to make me into a calculator, Mr. Levie?

JUDGE PAINTER: Mr. Levie, would one or two do?

MR. HECHT: Well, let him go through each one and we'll do it that way.

MR. LEVIE: If I might approach the witness for this purpose, Your Honor--

Q (By Mr. Levie) Mr. Carr, turning to Exhibit 15(a), if we might, there are three option order forms now on page 15(a). Are your initials on any of those?

A At least one.

Q 15(b) also has three option order forms. ARe your initials on any?

A At least one.

Q 15(c) has three forms--?

A All three..

Q 15(d) has three forms?

A At least two.

Q 15(e) has three forms?

A One.

Q 15(f) has three forms?

A One.

Q 15(g)?

A One.

Q 15(h)?

A One.

Q 15(i)?

A One.

Q 15(j)?

A Two.

Q 15(k)?

A One.

Q 15(l)?

A One.

Q 15(m)?

A Two.

Q 15(n)?

A Two. These are prior to the 17th, Mr. Levie.

Q 15(o)?

A One.

Q 15(p)?

A One.

Q 15(q)?

A Two.

Q 15(r)?

A One.

Q 15(s)?

A Three.

Q 15(t)?

A Two.

Q 15(u)?

A At least two.

Q 15(v)?

A At least two.

Q 15(w)?

A One.

Q 15(x)?

A At least two.

Q In those places where your initials appeared on Division Exhibit 15(a) through 15(x), that would indicate that you signed for monies received for the payment of option purchases on whatever date is indicaated on those, correct?

A I indicated by my signature that funds had been received in the amount indicated on the order.

Q For the purchase of commodity options through Lloyd, Carr and Company, correct?

A Not for any purpose other than to indicate that funds had been received.

Q Exhibits 15(a) through 15(x) are entitled, "Option Order Forms", correct?

A Correct.

Q And customers send in money to pay for option orders, correct?

A Correct.

Q And when the money is received to pay for those option orders, the receipt of that money is noted someplace, correct?

A Yes.

Q And it's noted on forms such as those represented on 15(a) through 15(x), correct?

A Usually, they are noted on there sometime after the funds have been received. The receipt of funds is indcated somewhere else, and upon receipt of funds options are purchased. I had looked through th ese--this was in a time when we had changed bookkeepers; usually, the bookkeeper indicates receipt of funds. We had changed bookkeepers. The mother of the original bookkeeper had died and there was no one in the office during that period of time, so I, one evening, I guess, went through the list of funds received, and in order to complete the records, had signed here that the funds had been received, and on what day they had been received.

Q Is it your testimony that the places where your initials appear on Exhibit 15(a) through 15(x) were all done in one sitting looking from another list?

A It could be. It could be, because it's not my-- if you look past this or before it, you'll find that this may be--this covers a period of time of approximately a week or less, on which my signature so does appear.

Q Is there any question in your mind, Mr. Carr, that Exhibits 15(a) through 15(x) represent the reciept of monies from customers for payment of option orders?

A It indicates that money has been received, and it indicates that money has been received and recorded elsewhere.

Q But my question was, Mr. Carr, is there any question in your mind, as a partner in Lloyd, Carr and Company, that Exhibits 15(a) through 15(x) represent the receipt of customers monies for payment of option purchases?

A If you're asking me if I'm aware that money was received, yes, I was aware that this money was received and was satisfied that it was received properly, recorded properly and my initials indicate it. If you're trying to say that I approved the order, that's not the case, because there's a broker here and a branch manager who approved the order, both of whose signatures appear on each of these. Long before mine came on it.

Q I'm afraid, Mr. Carr, the question still is, do those document , 15(a) through (x), represent the receipt of monies for commodity option purchases?

A Oh, yes. Yes. Sorry.

Q To the best of your knowledge, Exhibits 15(a) through 15(x) are true and accurate copies of the originals in the possession of Lloyd, Carr and Company, correct?

A Yes.

MR. LEVIE: Your Honor, I move 15(a) through 15(x) into evidence.

MR. HECHT: No objections.

JUDGE PAINTER: So admitted.

(The documents previously marked Division Exhibit 15(a) through 15(x) for identification were received in evidence.)

Q (By Mr. Levie) Now, when a customer sends in money to pay for an option purchase, into what bank account is that money placed?

A The money was placed in the bank account of Lloyd, Carr Financial until the last week in--until perhaps the 24th or 25th of January, when at the request of the CFTC, specifically, at the request of Mr. O'Brien, we changed--

we were told to change the bank account title from--to bundle everything under Lloyd, Carr and Company. And change the title of the bank account and the account with the carrying broker from Lloyd, Carr Financial to Lloyd, Carr and Company. Now, that created somewhat of a problem, because Lloyd, Carr and Company was a sole proprietorship. So we then made Lloyd, Carr and Company into a partnership and changed the titles of the accounts. And that's the way everything has been since then.

Q Prior to January 24th of this year,--?

A Oh, I can answer your question. Okay, prior to the 24th and subsequent to the 17th, I would say that the funds were deposited in the account that was then titled, "Lloyd, Carr Financial".

Q Prior to the 24th, what funds, if any, were deposited in the account entitled, "Lloyd, Carr and Co."?

A Generally, it was only money that I received out of Lloyd, Carr Financial, because the Lloyd, Carr and Co. account prior to that date was treated as my personal account and was not really used for the business in any way.

Q So prior to January 24th, monies sent in by customers to pay for option purchases were not placed in the account entitled, "Lloyd, Carr and Co.", correct?

A Carrect. They were put in Lloyd, Carr and Company, the title of which now has been changed to Lloyd, Carr and Co. Special and is considered now the operating account of the company.

Q Who is the carrying broker through which Lloyd, Carr and Company purchases options?

A Rudolf Wolf.

Q Does Lloyd, Carr Financial Co. use the same carrying broker?

A Repeat that question?

Q Perhaps I can consolidate it. Who is the carrying broker for Lloyd, Carr and Company and Lloyd, Carr Financial Co.?

A Well, it's one company now. It's one company, Lloyd, Carr and Company. It was only a question of the title of the account--on Lloyd, Carr Financial was changed to Lloyd, Carr and Company. And the carrying broker is Rudolf Wolf.

Q Does Lloyd, Carr and Company place orders to any carrying broker other than Wolf?

A Just give me your definition of carrying broker, would you?

MR. HECHT: Your Honor, at this stage I would like to put on the record that if we go into this area, I'm--I want a representation on the record by the Division of Enforcement that they will not improperly interfere with any other arrangements that Lloyd, Carr and Co. has for the purchase of options in London. We have had some problems in the past and I think a representation should be made on the record.

JUDGE PAINTER: It's been made.

Mr. Levie?

Q (By Mr. Levie) Mr. Carr, I show you a six-page document, which has been marked as Exhibit--Division Exhibit 12(a) through 12(f) for identification.

(The documents above-referred to were marked Division Exhibits 12(a) through 12(f) for identification.)

MR. HECHT: Excuse me, Your Honor. I didn't hear a representation from Mr. Levie, so--

JUDGE PAINTER: Well, he hasn't pursued the question. Do you intend to, Mr. Levie?

MR. LEVIE: No. I'm coming back to it, Your Honor.

JUDGE PAINTER: We'll wait until he gets back to it.

Q (By Mr. Levie) Can you tell us what Exhibits 12(a) through 12(f) are?

A I see that 12(a) and 12(b) are for periods of time prior to the period we're supposed to be covering here, as is 12(c)--the 4th of January--

Q Mr. Carr, if I might direct your attention to pages 12(a) through 12(f). You will notice there are deposits listed on this bank statement. Do those deposits represent customer funds received for the purchase of options?

A I will repeat. These--more than half of this--is prior to the period under investigation, which is from January 17th on. I would like my attorney to tell me that I am required to--

Q Well, let's just talk about--do the deposits represented on Division Exhibits 12(a) through 12(e) represent the placement of monies received from customers for purchases of options in the bank account of Lloyd, Carr Financial Co.?

A I would say, by far, the majority of these deposits would represent purchases of options made by customers of Lloyd, Carr Financial.

Q I now hand you a four-page document, Division Exhibit 13(a) through 13(d), a bank statement of Lloyd, Carr and Co. Special. Do the deposits represented on those four pages also represent the receipt of customer funds for payment of option purchases?

(The documents above-referred to were marked Division Exhibits 13(a) through 13(d) for identification.)

A Indeed, they do.

Q I now hand you Division Exhibit 14(a) through 14(b), a two-page document, and ask you if the deposits on those bank statements represent monies received from customers for payment of options purchases?

(The documents above-referred to were marked Division Exhibits 14(a) through 14(b) for identification.)

A No, no.

Q What do the deposits on 14(a) represent? What's the source of those funds?

A This is an account that was conceded as my personal account, and they could possibly have been drawing from Lloyd, Carr Financial or the same Lloyd, Carr Financial account, which is now called Lloyd, Carr Special, or they could have represented income deposited in those accounts from other sources.

Q If I understood your testimony a few moments ago, prior to January 24th of this year, the money that was deposited in the account represented on Exhibit 14(a) would not be customer funds, correct?

A Yes. Generally speaking, with perhaps some exceptions that would have been mistakes, yes.

Q After January 24, 1977, the deposits that are listed on Exhibits 14(a) and 14(b)--excuse me, 14(a)--do they represent customer funds sent in for payment of option purchases?

A Generally speaking, no.

Q You say, "Generally speaking." Have there been occasions since January 24 where customer funds had been placed in the account represented by 14(a)?

A I don't believe so, Mr. Levie, but I'm not prepared to make a flat statement that that did not occur.

MR. LEVIE: At this time, Your Honor, I would move into evidence Exhibits--Group Exhibits 12, 13 and 14.

MR. HECHT: Your Honor, I'd like to state that Exhibit 12(a), (b) and (c) are irrelevant and outside of the scope of the matters alleged in the complaint; 12(d) we would have no objection to since that covers part of the relevant period; as far as Exhibit 13 goes--

MR. LEVIE: Excuse me, Mr. Hecht, would you address yourself to 12(e) and (f)?

MR. HECHT: 12(e), no objection; 12(f), no objection. Exhibit 13(a) through 13(d), no objection. Exhibit 14(a), I would object on the grounds of relevancy, since this apparently relates to Mr. Carr's personal account. It's there. It's already been discussed on the record, but it is, in my opinion, irrelevant.

JUDGE PAINTER: Group Exhibits 12(a) through 12(f), 13(a) through 13(d) and 14(a) through (b) will be admitted into the record. Your comments are noted in the record, Mr. Hecht.

MR. HECHT: Thank you, Your Honor.

(The documents previously marked Division Exhibits 12(a) through 12(f and 13(a) through 13(d) and 14(a) through 14(b) for identification were received in evidence.)

Q (By Mr. Levie) Mr. Carr, when a customer places an order for an option with Lloyd, Carr and Company, Lloyd, Carr and Company in turn contacts someone in London to actually purchase the option, correct?

A Yes, either directly or indirectly, we do that, yes.

Q Lloyd, Carr and Company is not a mem ber of the ICCH, are they?

A No, they are not, Mr. Levie, as you well know.

Q So through which member of the ICCH does Lloyd, Carr place its customer orders?

A That answer hasn't changed in the last ten minutes. Rudolf Wolf.

Q Does Lloyd, Carr and Comapny use anyone besides Rudolf Wolf to place order on the ICCH?

MR. HECHT: I would like to object to this for the same reasons before, and I want a representation from Mr. Levie on the record that he will not improperly interfere with any relationship that Lloyd, Carr may have with another broker.

JUDGE PAINTER: I'm sure Mr. Levie is going to state that he will not interfere improperly. You are not eliciting this information for the purpose of contacting the individual that may or may not be named, is that true, Mr. Levie?

MR. LEVIE: Your Honor, the Division has no intention of engaging in any improper conduct with respect to this information.

JUDGE PAINTER: I suppose Mr. Hecht is driving at this point. He does not want parties to be contacted and perhaps discouraged from doing business wit- Lloyd, Carr and Company. And that is not your purpose, I assume, in asking the question.

MR. LEVIE: It is not, Your Honor.

JUDGE PAINTER: Does that satisfy you, Mr. Hecht?

MR. HECHT: Well, it's not the purpose in asking the question, but the result of that question may, and I want a representation that they will not contact these people. It's not germain.

JUDGE PAINTER: I think it's germain to the hearing to know the broker that Lloyd, Carr and Company deals with.

MR. HECHT: He's already stated that.

JUDGE PAINTER: The fact we're dealing here with some limited issues, Mr. Levie has stated he has no intention of interferring whatsoever with any relationship between Lloyd, Carr and any broker that may be named.

Do you have any intention of even contacting them, Mr. Levie?

MR. LEVIE: At this point, I would say no, Your Honor, but--

JUDGE PAINTER: Well, put us on notice before you do, if you do elicit a name.

MR. HECHT: Rudolf Wolf has already been given on the record, Your Honor, and we're going to furnish the monthly statements.

JUDGE PAINTER: All right. You will answer the question.

THE WITNESS: Our business, in the time between January 17th and February 23rd, has been transacted through Rudolf Wolf.

Q (By Mr. Levie) Would you answer change if the date was January 17th until the present?

A No.

Q And I take it from your testimony it is only through Rudolf Wolf that orders from Lloyd, Carr and Company customers are placed on the ICCH?

A Have been placed in the period between January 17th and February 23rd.

Q With respect to the London Metals Exchange, are orders for Lloyd, Carr and Company customers from the period of January 17th, 1977,to the present placed through Rudolf Wolf only?

A Yes.

Q With respect to Lloyd, Carr Financial Co., from the period of January 17 of this year until the present, were all orders placed for option purchases by Lloyd, Carr

Financial Co. customers placed thorugh Rudolf Wolf?

A Yes.

Q On the ICCH, that is?

A Now you're talking LME?

Q I was talking ICCH first?

A And just now you mentioned LME--well, in both cases, only through Rudolf Wolf.

Q From January 17 to January 24 of this year, from what bank accounts were customer funds transferred to Rudolf Wolf? Let me rephrase that. From January 17 to January 24, with respect to Lloyd, Carr Financial Company, how was Rudolf Wolf paid to purchase the options?

A In two ways. Three ways, really. As a result of the CFTC placing themselves in contact with Rudolf Wolf, who had been our carrying broker for several months prior to January 17th, they indicated to us that they could not sell options to us directly, because you had indicated to them that we were under investigation. Therefore, we placed our orders through Lloyd, Carr Canada Ltd.. Now, funds were--you want the train through which funds went from us to Rudolf Wolf? Okay, in three ways. Number one, they were transferred from our bank account in Boston to our bank account in London and transferred to the bank account of Rudolf Wolf. Number two, they were transferred from our account to Lloyd, Carr Canada account in London and transferred from that account to Rudolf Wolf's account. Number three, they were transferred from our account to the Lloyd, Carr Canada account in Montreal and transferred from there to Rudolf Wolf in London.

Q Is it your testimony that Lloyd, Carr Financial Company was notified by Rudolf Wolf that they would not accept orders directly from Financial Co.?

A That's what I said.

Q When did this occur?

A On or about the 17th. Within a time frame of, let's say, ten days before or ten days after.

Q Were you told why it was acceptable tohave orders placed from Lloyd, Carr Canada and not directly from Lloyd, Carr Financial Co.?

A No. AS a matter of fact, the dealings between our company and Rudolf Wolf really took place through Charles LeMieux III, who, as a matter of fact, I think was there that week, the seek of January 17th.

MR. HECHT: Your Honor, if you please, I'd like to object to this whole line of questioning. It's really outside the scope of the matters at hand here. The important thing here was the options were purchased and produced the monthly statements.

JUDGE PAINTER: You're about through with this point, aren't you, Mr. Levie?

MR. LEVIE: I have just a few checks I'd like Mr. Carr to identify with respect to this.

JUDGE PAINTER: All right.

Q (By Mr. Levie) Following this up, so we are clear on dates, has this arrangement changed from January 24th to the present with respect to Lloyd, Carr Financial Co?

MR. HECHT: I'm going to object, if there's anything after February 23rd.

JUDGE PAINTER: Wasn't there an agreement between counsel that most of the evidence taken in this hearing would pertain to the period of time, January 17th through the 23rd, Mr. Levie?

MR. LEVIE: With respect to the subpoena, that's correct, Your Honor.

JUDGE PAINTER: And is it essentially correct to your case to get evidence into the record that occurred after February 23rd?

MR. LEVIE: Well, if there's been a substantial change in the course of conduct, which might affect their fitness in some way that the Commission will have to pass on, yes.

JUDGE PAINTER: One of the problems we run across here, Mr. Levie, is if we run this on an open book rule, this hearing will never end, because they may sin tomorrow. I'm more interested in those sins that have taken place, if they have. If you would limit then the examination of this witness to that time up to the 23rd, unless you have cold, documented evidence in your possession showing that something went wrong after the 23rd. I simply feel we could never end this hearing if we are to move ahead in time.

MR. LEVEI: Then I assume, Your Honor, your ruling would also be that any evidence as to fitness would stop on the 23rd of February?

JUDGE PAINTER: That would be agreeable, would it not, Mr. Hecht? We don't want fitness after the 23rd; we don't want unfitness after the 23rd.

MR. HECHT: Well, I think the issues, if you take a look at our motion to dismiss, are fairly well clarified. You could almost say that between January 17th and January 20th, as a practical matter--instead--

JUDGE PAINTER: We'll stay with the 23rd.

All right, Mr. Levie.

Q (By Mr. Levie) When an option--may I just have the Court's indilgence for a moment? I think the question then was, from January 24th until February 23rd, was there any change in the procedure of ordering options, that is, by sending money through Lloyd, Carr Canada to Rudolf Wolf?

A No, not really.

Q Was the procedure the same from January 24th to

February 23rd with respect to Lloyd, Carr and Co. for the purchase--

A There was no Lloyd, Carr Financial, Mr. Levie, after we changed the title of those accounts at the request of the Agency. So everything was Lloyd, Carr and Company.

MR. HECHT: Your Honor, I'm going to object. This ground has been gone over about four separate times by Mr. Levie.

JUDGE PAINTER: I think it's been well covered, but let's get the answer, and then you're ready to move on, aren't you, Mr. Levie?

MR. LEVIE: Yes, Your Honor.

Q (By Mr. Levie) From January 24th to the 23rd of February, options purchased by Lloyd, Carr and Co. through Rudolf Wolf involved the transfer of money from Lloyd, Carr Canada to Rudolf Wolf, correct?

A Yes. Well, they were purchased through Lloyd, Carr Canada.

Q From January 17th until February 23rd, in whose name were the options registered on the ICCH?

A Rudolf's--Rudolf Wolf's name, I guess.

Q From January 24--excuse me--January 17th to February 23rd, in whose names were options purchased on the LME for Lloyd, Carr and Company customers?

A Well, our confirmations--I think what you're looking for--our confirmations came from Rudolf Wo[illegible] on Rudolf Wolf's confirmation forms in the name of Lloyd, Carr and Company up to approximately the middle of January, and Rudolf Wolf's confirmations were in the name of Lloyd, Carr Canada Ltd. subsequent to that time.

MR. LEVIE: Your Honor, if I might take a moment to get some checks marked to finish up this area of examination?

JUDGE PAINTER: Off [illegible] record.

(A brief recess was taken.)

JUDGE PAINTER: Back on the record.

MR. LEVIE: Your Honor, Division Exhibits 16(a) through 16(f) are checks and, if my understanding is correct, Mr. Hecht, Mr. Carr and I can stipulate that 16(a) and 16(b) were used for the purchase of commodity options and 16(c), 16(d) and 16(f) were personal draws to Mr.--for Mr. Carr.

MR. HECHT: And Mr. LeMieux.

MR. LEVIE: And Mr. LeMieux.

JUDGE PAINTER: So stipulated.

MR. HECHT: Yes.

MR. LEVIE: Then I would move them into evidence.

MR. HECHT: No objection, Your Honor.

JUDGE PAINTER: Admitted into the record.

(The documents above-referred to were marked Division Exhibits 16(a) through 16(f) for identification and received in evidence.)

Q (By Mr. Levie) Mr. Carr, for clarity, did I understand your last answer before we took the short recess that Rudolf Wolf confirms the purchases to Lloyd, Carr Canada?

A Yes.

Q What is the affiliation between Lloyd, Carr and Co. and Lloyd, Carr Canada?

MR. HECHT: Objection, Your Honor. It's not really relevant or within the scope of the matters alleged in the complaint.

JUDGE PAINTER: I'll overrule the objection. I can see a relevancy. Answer the question, if you can.

THE WITNESS: Yes. The partner--the stockholders in Lloyd, Carr Canada Ltd. are identical to the partners in Lloyd, Carr and Company in Boston.

Q (By Mr. Levie) When Lloyd, Carr and Co. subsequent to January 24 placed an order for an option, it placed it with Lloyd, Carr Canada, correct?

A Yes.

Q And then Lloyd, Carr Canada placed the order in London with Wolf, correct?

A Correct.

Q Did Lloyd, Carr Canada--

A On some occasions we placed--on some occasions I, sitting in Boston, placed the order with Rudolf Wolf in London for Lloyd, Carr Canada also, which was really our order.

Q But all confirms went to Lloyd, Carr Canada?

A Lloyd Carr Canada Ltd., right. They were all done in the name of Lloyd, Carr Canada, Ltd.

Q Did Lloyd, Carr Canada Ltd. charge any fee to Lloyd, Carr and Co.?

A No, no.

Q Subsequent to January 17, between January 17 and January 24, did Lloyd, Carr Financial Co. sell any half options?

A Yes. I believe so. I don't know that we did on each one of those days or the last of those days, but up until the auditors came in, we did sell half options.

Q Did Lloyd, Carr and Co. ever sell half options? Subsequent to January 17th?

MR. HECHT: Your Honor, I'd like to object. I just don't see how it's relevant to the issues in this particular proceeding.

JUDGE PAINTER: Well, I might learn something about half options. I don't think it will harm the record.

MR. HECHT: Unless the Staff is taking the position that it's illegal to sell half options, or improper, which is not in the complaint, I really don't see the relevancy.

JUDGE PAINTER: Can you tell us the point you're trying to make here, Mr. Levie?

MR. LEVIE: The company, as I understand it, Mr. Hecht and Mr. Carr had conversations with respect to the selling of half options and principal and agency in several conversations, as a resulf of which Mr. Carr indicated he was------taking certain actions. I don't know what his reason was. That's one of the things I want to find out. If they were seeking to comply with what they consider the law would bear on their fitness, Your Honor.

MR. HECHT: No. I think he's misstating for the record, and we should set it straight, it was a three-way conversation involving Mr. Carr, myself and Miss Chan, and it was a question at that time, because of the ruling of Judge Knapp, the Staff had taken the position that they wanted a determination whether people were principals or agents, which was, to me, misconstruing that opinion. And we explained to Miss Chan that they had done this practice on limited occasions before, and that because of certain internal bookkeeping problems and other considerations, it was decided that Lloyd, Carr and Co. would not solicit, except with rare occasions, this kind of transaction. Because even though there's no question as to its legality or illegaility, it raises certain questions not only as far as bookkeeping, but it raises questions as to discretionary accounts, where, in fact, when you have a half option--and Miss Chan and I went over this--whether because of the mere existence of a half option, it could be deemed a discretionary account.

JUDGE PAINTER: Well, let's get his answer to this, and then move on, if you can, Mr. Levie.

THE WITNESS: Did we seel half options prior to the visit of Miss Chan, is that about the question?

MR. LEVIE: Yes.

THE WITNESS: Yes, we did.

Q (By Mr. Levie) Then you notified Mr. McCarthy by letter of January 20th of this year that the firm will no longer sell less than full options, correct?

A Yes, it is correct. It was suggested by Miss Chan that it was creating problems for us. I don't know exactly which ones. I know that we had some problems, because they forgot to match up two halves and we bought to full options for customers who wanted halves, and we wound up owning two halves. And that happened on three, possibly four, occasions. So I was certainly willing to give the letter at their request.

Q I show you Division Exhibit 17 marked for identification

Is that the letter you gave to Miss Chan?

(The document above-referred to was marked Division Exhibit 17 for identification.)

A Yes.

Q After January 20th, did Lloyd, Carr Financial Co. sell only half options?

A After January 20th?

Q Yes?

A Lloyd, Carr Financial Co. really didn't do anything, Mr. Levie, after that date.

Q After January 20th, did Lloyd, Carr and Co. sell only half options?

A Immediately subsequent to this, no. Two or three weeks after this letter, I don't know. I think it still was not our policy to, I would say that.

Q Between January 20th, the date of Division Exhibit 17, and two and three weeks after that letter, were you informed when half options were purchased?

A No--I have not been informed that half options are being sold. It could very well be that not a single one has been sold between then and now. I know that, having written this letter, I made clear to branch managers and sales managers that there would be no more half options sold, and I have every reason to believe that that policy was followed. You know, 100%. I don't look over too carefully the contracts that I sign on behalf of the company, so that would mean, you know, nothing.

JUDGE PAINTER: ARe you trying to show, Mr. Levie, that there is something improper about the sale of half options?

MR. LEVIE: Your Honor, that would get in large part to what the customers were told, on the one hand, and on the other hand, it would affect the accounting end of the firm's situation vis a vis the Commission as to how these things were treated: principal, agent, whether certain safety charges have to be made. So as to whether they've been complying and whether they are presently fit, I think this definitely does have a bearing.

JUDGE PAINTER: All right, let's find out how--

MR. HECHT: Your Honor, let me state my objection for the record. There's nothing illegal in any statute or regulations with respect to half options. It does pose some accounting problems which became effective for the first time on January 17th, 1977. But the point is, there's nothing illegal about them, and there's nothing improper about them. If they feel that the options were quote "misrepresented", well, that gets into the salesmen and their contacts with the customer, and that's not an issue here.

JUDGE PAINTER: Mr. Levie, why don't you take ten minutes to inquire into this half options business, and then we're going to take a recess for lunch. I'm sure you can cover it in that time, can you not?

MR. LEVIE: Yes, Your Honor. I'll now have this marked as the next group exhibit, Division Exhibit 18(a) through 18(f).

(The documents above referred to were marked Division Exhibits 18(a) through 18(f) for identification.)

THE WITNESS: I would also say that once the promise of the Agency that we would be registered by Monday, the 24th, I would not have felt constrained to continue this policy of not sellin- half options or any of the other restraints.

Q (By Mr. Levie) Did that same lack of constraint apply to complying with the other regulations?

A No, Mr. Levie. This is not a regulation, so you shouldn't say "other regulations". You should say, "any".

JUDGE PAINTER: Mr. Carr, simply answer the questions to the best of your ability. You've got a competant counsel over here to raise objections, if the questions are improper.

THE WITNESS: Yes, Your Honor.

JUDGE PAINTER: Anything further--oh, you're waiting for them to be marked, Mr. Levie?

MR. LEVIE: Yes, Your Honor.

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: Back on the record.

It is now 12:00 noon. This would be an appropriate time to recess for lunch. We'll meet back here at 1:45 p.m.

Off the record.

(Whereupon, at 12:00 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 1:45 p.m. in the same place.)

AFTERNOON SESSION

2:30 p.m.

JUDGE PAINTER: On the record.

It's now 2:30. We're informed by Mr. Hecht that Mr. Carr is not feeling well, and will not be here this afternoon, but he will, God willing, be here at 9:00 a.m. tomorrow morning.

Mr. Levie, you're going to put on your witness next.

MR. LEVIE: Thank you.

It's my understanding, Your Honor, that if Mr. Carr is unable to appear because of illness tomorrow that I finish my case in the morning or whenever tomorrow we will move into Respondent's case subject to my finishing with Mr. Carr.

Is my understanding correct?

JUDGE PAINTER: That's correct.

MR. HECHT: Your Honor, I think it just should be noted that everyone could see this morning that Mr. Carr was not in the best of health. The second thing is that we may bring on a motion to dismiss at the close of your case.

JUDGE PAINTER: Thank you.

MR. HECHT: Based on the evidence.

MR. LEVIE: At this time, Your Honor, I would also indicate for the record that I have tendered to Mr. Hecht for the inspection of Mr. Carr and the people at Lloyd, Carr & Company Divisions Exhibits 15(a) through (x) which are in evidence; Division's Exhibits 18(a) thru (f) which have been marked for identification; Division Exhibits 20(a) thru (h) marked for identification; Exhibits 21(a) thru (w) marked for identification; and Exhibits 22(a) thru (aa) marked for identification.

The purpose being that I intend to ask Mr. Carr when he next testifies whether those documents I've just listed represent all orders placed through the Boston office of Lloyd, Carr & Co. from January 17 toc February 23.

JUDGE PAINTER: Thank you, Mr. Levie.

MR. LEVIE: I now call Miss Chan.

Whereupon,

WAI-MON CHAN

was called as a witness and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Levie) Miss Chan, would you give us your full name and spell it for the record, please?

A My name is Wai-Mon Chan, W-a-i hyphen M-o-n, and my last name is C-h-a-n.

Q Miss Chan, you're presently employed by the Commodity

Futures Trading Commission?

A Yes.

Q Prior to that were you employed by the Commodity Exchange Authority?

A Yes.

Q For how long have you been employed by these two agencies?

A Approximately two and a half years.

Q What have your duties been during these two and a half years and your titles, if any?

A Okay. When I first started with the agency called CEA as an accountant working with senior auditors, and for the past two years I joined, what you call it, CFTC. My major duty is to examine books and records of FCM's or the registrant to see if they comply with the Commodity Exchange Act and the regulation.

Q And in what do you have your college degree, Miss Chan?

A I have a bachelor of business administration in public accounting.

Q Have you taken any post graduate courses?

A Yes, I'm taking some graduate courses at Baruch College.

Q Have you received any on the job training at either the CEA or the Commodity Futures Trading Commission?

A Yes, I do.

Q And what has that training consisted of?

A Major is the on job training like going out with the senior auditors and assist and prepare work papers. You know, get the documents pertaining to the audit.

Q In the course of the time you have been with the two agencies have you had occasion to assist on a number of audits?

A Yes.

Q Examinations, rather. How many?

A Approximately 19, audits.

Q And were some of those examinations -- in some of those examinations were you in charge and in some were you assisting someone else?

A Yes.

Q Do you have the breakdown?

A About nine of them is assisting and ten of them is in charge.

Q Directing your attention to January 20 of this year did you have occasion to perform a pre-registration examination here in Boston?

A Yes.

Q Of what company?

A Lloyd, Carr Financial Co.

Q When did you receive that assignment?

A On 18th of January 1977.

Q Where did that examination take place?

A When?

Q Where?

A In Boston.

Q At whose offices?

A In Lloyd, Carr Financial Co.'s offices.

Q You've been here during testimony thus far given when James Carr has testified? Had you met James Carr during the week of January 20 of this year?

A Yes.

Q Where and when?

A On the 20th and 21st of January 1977 also in Lloyd, Carr Financial Co.

Q When you arrived at the office of Lloyd, Carr Financial Co. on the 20th of January did you tell them why you had come?

A The impression I got was that they already knew that I'm coming on that day.

Q Did you have occasion to meet with James Carr on the 20th of January?

A Yes.

Q Were you provided or did you ask for any books and records when you came to the firm on January 20?

A Yes, I did.

Q Do you recall what you asked for?

A Okay. I asked for orders for December 1976, because I'm doing the audit for that date, and I also asked for cash receipts or disbursement journals. Those are the major things I ask. And also some of the documents to support the date that they have on the 1-FR which they filed as of January 16.

Q To whom did you make this request for the books and records?

A At the presence of Mr. Carr and also Mr. Winston and I think it is Rakity.

Q Is that R-a-k-i-t-y?

A Yes.

Q And how were Mr. Winston and Mr. Rakity identified to you?

A They were introduced to me by Mr. Carr.

Q Miss Chan I had marked for identification Division Exhibit 23, and ask you if you have seen that document before?

A Yes. It has some changes here.

Q And what then are the changes from the condition in which you saw this document -- when did you first see this document? Without any changes?

A Okay, I believe it is on the 18th of January.

Q Where did you see it?

A In my office.

Q In New York?

A Yes.

(The document above-referred to was marked Division ExhibitNo. 23 for identification.)

Q Were you told anything when you were shown this document for the first time?

A (No response.)

Q Who gave it to you?

A I believe it was the branch chief, Mr. McCarthy.

Q Were you given any instructions by Mr. McCarthy when he turned over to you Exhibit 23?

A He just -- you know, he told me I had to go up to Boston and to examine the books of Lloyd, Carr and verify every item on this 1-FR.

MR. LEVIE: Can we go off the record for a moment, Your Honor?

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

MR. LEVIE: Your Honor, I note that I inadvertently handed Miss Chan my copy, or had marked for identification my copy of 1-FR which I made certain original notations. I ask that we would be permitted to substitute one that is identical to the one Mr. Hecht has without my comments on it.

MR. HECHT: I don't have any notations on this one?

MR. LEVIE: I know. That's why. It was just on mine. I inadvertently gave her mine.

MR. HECHT: Okay.

I have no objection, Your Honor.

JUDGE PAINTER: Granted.

Proceed.

Q (By Mr. Levie) Now, Miss Chan, the Exhibit 23 which you are now examining is that the 1-FR which you received in January prior to going to Lloyd, Carr Financial Co.?

A Yes.

Q What precisely was your purpose for going to the offices of Lloyd, Carr Financial Co. on January 20 of this year?

A Okay, it's to see whether Lloyd, Carr complies with all the regulations of the Commodity Exchange Act, and then like -- one of the regulations, 1.17, we says they have to have minimum financial requirement of $50,000.

Q In the past while you've been employed at the CEA and the Commission have you had occasion to make similar examinations of determining whether someone met financial requirements and other record and bookkeeping requirements?

A Yes.

Q When you went to the offices of Lloyd, Carr Financial Co. on January 20 what books and records, if any, were produced for your inspection?

MR. HECHT: Objection.

I believe it's already been asked and answered.

MR. LEVIE: I believe the question was "what did she ask for" and she answered that, and now I'm asking "what was produced."

MR. HECHT: Withdraw the objection.

THE WITNESS: Okay, first of all, they gave me the bank statements for three banks, and they also furnished me with the carrying brokers month end statements, and they gave me some customer's order forms which was the option order forms in a box, and also some three by five index cards which shows the option orders for the customers.

Q (By Mr. Levie) Were those all the books and records that were provided to you when you first arrived at the firm?

A Yes.

Q Who provided those to you?

A Mr. Carr.

Q Did you have occasion to comment or say anything to Mr. Carr or Mr. Winston or Rakity regarding the records which had been provided you?

A Yes, I did.

Q What did you tell them and to whom?

A Okay, I say, you know, based on looking at those records which does not provide me any information I need. So, I told them, I said "I need schedules, you know, or any kind of records which could show to me that -- which which supports data that they put on the 1-FR."

Q And did they provide the data to support what they placed on the 1-FR which as I understand it is Exhibit 23?

A Upon my request they start preparing schedules showing like how much money they have in the bank as of December 30, I guess, or the 31st. And expenses, things like that. They start preparing schedules.

Q Did they prepare the schedules in your presence?

A Yes.

Q Who prepared them?

A Winston and Rakity.

Q And was Mr. Carr there when these were being prepared?

A Yes.

Q Did anyone at the firm on January 20 comment to you about the books and records maintained by Lloyd, Carr Financial Co.?

MR. HECHT: Objection, Your Honor.

It's (a) not competent testimony, (b) not relevant.

The best evidence is her view of what the records were, and what the comment from an unspecified person I really don't think is relevant.

JUDGE PAINTER: I'll overrule the objection.

I'd like to know the tenor of the conversations that went on between the parties. I think we heard some of that from Mr. Carr, and I'm sure we'll hear more tomorrow regarding these conversations.

Proceed, Mr. Levie.

THE WITNESS: Could you repeat that?

Q (By Mr. Levie) Did anyone at Lloyd, Carr Financial Co. say anything to you on January 20 regarding the books and records that were being maintained by that firm?

A Okay, I was told by the accountants -- he informed me he was a CPA, Mr. Winston, that Lloyd, Carr Financial Co. did not have any trial balance or general ledgers, cash receipt and disbursal journals.

MR. HECHT: Your Honor, I move the answer be stricken as not responsive. Mr. Winston is not an employee of Lloyd, Carr & Co.

JUDGE PAINTER: I won't strike the answer, but I would say that it's a little more, perhaps, than Mr. Levie had asked for.

Q (By Mr. Levie) Was Mr. Carr present when Mr. Winston made this statement?

A Yes, he was there.

Q Did Mr. Carr say anything when Mr. Winston made this statement to you?

A He didn't say anything.

Q Were schedules which you have just described prepared for you on January 20?

A You mean the pre pay expense schedules and those cash --

Q The schedules that you requested?

A Yes, they were prepared while I was there.

Q Did you have occasion to examine them on the 20th?

A Yes.

Q And what was the results of your -- what did you do with those schedules once you examined them?

A I tried to compare those with the Form 1-FR which they submit to us on January 16.

Q What was the result of that examination?

A It shows a lot of discrepancies.

Q What if anything did you say to Mr. Carr or Mr. Winston or Rakity regarding those discrepancies.

Q Okay, at that time I know that in my mind my office will not accept this 1-FR. So, I recommended or suggested to them to file an amended 1-FR which reflect the orders, figures they give to me on the schedules.

Q When you say your office would not accept that 1-FR you referring to Exhibit 23, in front of you?

A Yes.

Q To whom did you make this suggestion that an amended 1-FR be filed?

A I believe to both Winston and Carr.

Q Did they prepare an amended 1-FR?

A They did.

MR. LEVIE: Your Honor, may I have this marked as Division Exhibit 24 for identification, please.

(The document above-entitled Division Exhibit No. 24 for identivication was marked.)

Q (By Mr. Levie) Miss Chan, I show you what has been marked as Division Exhibit 24 for identification and ask if you can identify that document?

A Yes.

Q What is that document?

A The amended 1-FR which I suggested they prepare.

Q Did you have occasion to examine the original Division Exhibit 24 while you were in Boston?

A Yes.

Q When?

A Because while they were preparing it I was there too, and I --

Q Was Division Exhibit 24 given to you in Boston?

A Yes.

Q How many days were you in Boston?

A Two -- one and a half days.

Q That would be the 20th and 21st?

A Yes.

Q Do you recall whether Exhibit 24 was given to you on the 20th or 21st?

A On the 20th.

Q What books and records are required to be kept -- let me rephrase it if I might. When you asked for books and records of a firm you come to examine are you basing that request on any regulations of the Commission?

A Yes.

Q What regulations?

A I believe it's Section 1.18 of the regulation.

MR. HECHT: Your Honor, I'm going to object that he's asking the Witness to testify to legal conclusions. She's qualified as an accountant. I don't think she's qualified as an attorney.

JUDGE PAINTER: There's some merit to your objection, Mr. Hecht, but I would like to know whether this Witness is familiar with the regulations that require that certain books and records be kept.

Overruled.

MR. LEVIE: I believe she had answered the question, Your Honor.

Q (By Mr. Levie) In the examinations you have performed or assisted in performing prior to January 20, have you had occasion to view the books and records of other firms?

A Yes.

Q And have you had occasion to determine whether the -- I'll withdraw that question. The Court's indulgence for a moment. (Pause.) With respect to Regulation 1.18 from your inspection did the books and records of Lloyd, Carr Financial Co. comply with 1.18?

MR. HECHT: Objection to the form of the question. He's asking for a conclusion. I think we got to go through the facts.

JUDGE PAINTER: I missed the question. I'm sorry, Mr. Levie, would you state it again?

MR. LEVIE: I believe the question was, Your Honor, whether the books and records provided by Lloyd, Carr Financial Co. complied with those books required to be kept under Regulation 1.18.

JUDGE PAINTER: I'll overrule the objection on the grounds that to be an auditor for this agency she should be, at least, familiar with those regulatory requirements.

MR. HECHT: Your Honor, that's not the grounds for my objection. The grounds, Your Honor, are that Mr. Levie is asking her for a conclusion.

JUDGE PAINTER: Why don't you ask her how the books differed from that which is required by the regulations, then, Mr. Levie?

MR. LEVIE: Well, I assume Mr. Hecht would have no objection to the Court and ultimately the Commission taking judicial and official notice of Regulation 1.18.

MR. HECHT: Yes, but Mr. --

MR. LEVIE: And that being the case I would ask Miss Chan to read into the record, so the record is clear, what 1.18 requires and then she can describe what differences if any existed -- --

JUDGE PAINTER: Let me ask her one question.

Miss Chan, can you tell us whether there were any deficiencies in those books and records and if so what they were?

THE WITNESS: Okay, may I say something? Okay --

MR. HECHT: Can I just -- Your Honor, objection for the record.

I know this is an expedited hearing. It still doesn't preclude the Division of Enforcement from presenting an prima facie case, and I think that having her read into the record as a way of refreshing her recollection the particular regulation I think --

JUDGE PAINTER: Mr. Hecht, she's not going to read into the record from a regulation.

She's going to tell me now about any deficiency that you found in the books and records maintained by Lloyd, Carr? Deficiencies under the regulations?

THE WITNESS: Okay.

According to the regulations, okay, they supposed to have a systematic and a formal set of books which means composed of trail balance, general ledgers and journals; things like that. But for Lloyd, Carr, when I went up there on the 20th and 21st, all they have is like bank statements, carrying broker month end statements, checkbooks and some loose checks.

And that's about it they have. So, to me, I mean as an auditor, is not -- you know, does not comply with Section 1.18.

JUDGE PAINTER: So, the things that were missing, specifically, were once again?

THE WITNESS: Okay.

Trial balance which is the most important thing; and the general ledgers; and cash receipt and disbursement journals.

JUDGE PAINTER: Thank you.

Q (By Mr. Levie) Did you tell Mr. Carr or Messrs. Winston and Rakity about what you considered to be deficient in the books and records?

A Yes, I did.

Q To whom did you tell and what did you tell that person?

A Okay, I told Winston and Carr that based on the thing that I find that they were primarily in violation of Section 1.18.

Q And when did you tell them this?

A On the 20th of January.

Q And you've indicated that Mr. Carr was present when you said that?

A Yes, he was there.

Q Were you asked specifically how Lloyd, Carr Financial Co. was in apparent violation of Section 1.18?

A See, when I told them that Mr. Carr didn't say anything, okay. But Mr. Winston was telling me that they do not require to have books and records until -- commencing the date they file the application which is the 17th of January.

Q Did you -- go ahead?

A Okay, and they mean they're in violation of that Section for four days, and that's it. And they're going to have books and records in the near future, maybe a week or so, going all the way back to January 1. Keeping books back to then.

Q Who told you they would have books and records prepared within the near future?

A By both Carr and Winston.

Q Was this still on the 20th?

A Yes.

Q Did you have occasion to discuss with Mr. Carr the question of half options?

A Yes.

Q When?

A The 20th.

Q And what was said during that conversation?

A Before I came up there we were thinking in our mind if they have half options and they have a question about whether the firm is an agent or as a principal in handling option transactions.

So, when I look at the order form which he provided me I saw half options, okay. Then I start asking him like "how you go about half options?" And he said, like, "it's very difficult to sell a whole option: so that the salesmen try to get a half option from one customer and another half from another customer."

Then I posed him a question "what happen if one customer wants to sell -- I mean, to exercise his half and the other customer does not want to?" Then he say he never had that problem yet, and he says maybe he's going to have some discretion over it from the customer. And then later he says "let me call my counsel first." So, he called Mr. Hecht. I don't know what they talk about for awhile, and then he put me on.

Q You say "he put you on" to whom are you referring?

A Mr. Carr told me to pick up the phone and I was part of the conversation.

Q And who was on the conversation of which you were a part?

A I think it was between me, Mr. Hecht, and Mr. Carr.

Q What was said during that conversation?

A Talking about half options I told Mr. -- I'm saying something about discretions, things like that. That's all I can remember. And Mr. Hecht was saying that, you know, if the firm has discretion over this -- exercising this half option Lloyd, Carr may be acting as a principal in handling these options.

So, he suggest to Carr that from now on the firm handle no more half options dealings. And then I said "okay," and I hang up.

Q Did Carr say anything to you after the phone call regarding half options?

A Yes. He say he's going to write something to our office to confirm from now on, in the future there's going to be no more half options or less than full options.

Q Did you hear whether or not Mr. Carr said anything to account executives at the Lloyd, Carr Financial Co. office regarding half options on that day?

A I believe that -- because I hear outside my office where I'm working that I heard "okay, no more half options" like that when he hang up the phone.

Q Well, to whom did he say that when he hung up the phone? Or did he say it before he hung up the phone?

A After.

Q To whom did he say it after he hung up the phone?

A Because I didn't see who he talked to, but I heard it out loud that he said "no more half options". That I hear.

Q As an accountant when you're seeking to determine whether someone meets the financial requirements of 1.17 what effect or what importance, if any, does it have if someone is a principal or an agent with respect to half options?

A Okay, I mean like I don't know about -- I don't know if you have a half option then you automatically become a principal. I don't know.

But as far as now, I mean like, it seems that way then if they are principals they realize the gains on the options. Then we would have to take a haircut, what we call it, because we consider those unsecured receivables.

At the same time you have a liabilities to the customers, and we treat them as an aggregated indebtedness, and we also have a haircut to it which is a 5% each way, a total of a 10%, you know, the total unrealized gains of those open options.

Q If a person is a principal or an agent does that have an effect on how you deal with their ability to meet the minimum financial requirements?

A Yes, if they are agents I would not have to take any haircuts. If they are principals then there would be haircuts.

MR. LEVIE: May I have the Court's indulgence for two or three minutes?

JUDGE PAINTER: Off the record.

(Short recess taken.)

JUDGE PAINTER: On the record.

Q (By Mr. Levie) Miss Chan, on the dates of January 20 and 21 when you were at Lloyd, Carr Financial Co. did they have current ledgers or other similar records which summarized with appropriate references to supporting documents each transaction effecting the assets of Lloyd, Carr Financial Co.?

A No.

Q On January 20 and 21 of this year during your examination did Lloyd, Carr Financial Co. have current ledgers or similar records showing or summarizing with appropriate references to supporting documents their liability accounts?

A No.

Q On those same dates did Lloyd, Carr Financial Co. have the appropriate ledgers or records with references to supporting documents for their income accounts?

A No.

Q What about for their expense accounts?

A No.

Q For their capital accounts?

A For the capital part all they show is like $25,000. That's it; so, I don't -- they don't have a breakdown as to how much is like -- each part of how much they have, no. They don't have that breakdown.

Q When you were at Lloyd, Carr Financial Co. on the 20th and 21st of this year did the firm have books of record -- records dealing with option accounts?

A All they have is two files. One of them is option order forms. One of them is a three by five index card.

MR. HECHT: Could we go off the record for a second, Mr. Levie, so that I can check the documents that came up. Just two seconds -- I want to check --

JUDGE PAINTER: Off the record.

(Short recess taken.)

JUDGE PAINTER: On the record.

Q (By Mr. Levie) Miss Chan, I show you Division Exhibit 8 which is an eight part form. Did you have occasion to see documents similar to those represented by Division Exhibit 8 on January 20 and 21?

A Yes.

Q With respect to the books and records of Lloyd, Carr Financial Co. on January 20 and 21 what journals and ledgers, if any, did they have?

A They didn't have any.

Q With respect to the cash in banks and on hand that were on the original 1-FR was Mr. Carr able to account for all the money which was listed in that category on the 1-FR, the first 1-FR?

A No.

Q With respect to the first 1-FR which is Division Exhibit 23 the category "equities on deposit with other brokers" did Mr. Carr estimate what some of those amounts were?

A According to him -- I questioned him on that day. He said "those are the unrealized gains and open options", for his customers. Okay, then I compared those -- his figures against the carrying broker's month end statements. It shows a lot, you know, discrepancies. Then he say he estimate that amounts there. And he also say since they are agents it does not, you know, matter how much he put on there because, like, the contract size of the liability. So, he put down the exact amount as a liability to a customer.

However, he left out something which I call cash ledger balance with the carrying broker in that amount.

Q With respect to accrued liabilities on the original 1-FR, Exhibit 23, were those figures given to you as estimates?

A See, like, when I asked him to produce schedules for all these items they cannot come up to the exact amounts. So, they told me, like, Mr. Winston which is like Lloyd, Carr's accountant, says they estimated that.

Q Was Mr. Carr present when Mr. Winston said that to you?

A Yes, he was there.

Q On January 20 did you have a discussion with Mr. Carr regarding whether orders had been recently filled?

A Yes.

Q What did he tell you?

A He told us, I mean me and Purta, that they cannot sell options.

Q Did he say why?

A Yes, because they haven't been registered yet.

Q Did you discuss -- did you tell Mr. Carr anything about placing funds -- customer funds for commodity options in a special account?

A No, I did not.

Q Did you have occasion to discuss with Mr. Carr before you left Boston the results of your examination of the books and records of Lloyd, Carr Financial Co.?

A Yes.

Q What did you tell him?

A I believe two times. The first time is the 20th. I told him based on the records, you know, they gave me -- they furnished me, they meet the $50,000. However, I said it has to be approved by my supervisor. That's on the 20th.

Okay, on the 21st I say to him again, I says "you meet the fifty, but you have to be approved it by my supervisor and also you have to be -- I mean, if it's approved by my supervisor the financial part is okay. However, you have to go through the registration part, and also you have to clear through the Enforcement Section too, because if they hold anything against you then, you know, your registration would be ended there."

And he told me there's no customer complaints against Lloyd, Carr.

Q By "he" you mean Mr. Carr?

A Yes.

Q Did you tell Mr. Carr that Lloyd, Carr Financial Co.

would be registered by Monday morning at 10:00 a.m.?

A No.

MR. LEVIE: May I have the Court's indulgence, briefly?

JUDGE PAINTER: Off the record.

(Discussion off the record.)

JUDGE PAINTER: On the record.

MR. LEVIE: I have no further questions at this time, Your Honor.

JUDGE PAINTER: You may cross at this time, Mr. Hecht.

MR. LEVIE: Excuse me.

I would just move into evidence Division Exhibits 23 and 24, Your Honor.

MR. HECHT: I'd like to reserve my objections until the end of her examination on these two particular exhibits.

JUDGE PAINTER: I think we can admit them at this time.

MR. HECHT: Let me -- I'll ask her a couple of questions on voir dire. Maybe we can do that before we get into her cross.

THE WITNESS: May I say something?

JUDGE PAINTER: You may, Miss Chan.

THE WITNESS: Okay, now when I look at the original one with the copy here it seems that they're missing the word partner under James A. Carr for the 1-FR there.

MR. HECHT: Which one? Twenty three or twenty four?

THE WITNESS: Twenty four.

MR. LEVIE: Two -- on page two the word partner under James A. Carr is missing?

THE WITNESS: Yes.

MR. HECHT: It should be in the original form has partner and when we xeroxed it we cut it off.

JUDGE PAINTER: So noted.

MR.HECHT: And with that notation I have no -- let me just check. You compared both of these forms with the original forms on file with the Commission?

THE WITNESS: Yes. Also for the 23 they're missing the word partner under Charles Le Mieux.

MR. HECHT: Okay, because it was cut off when you xeroxed it?

THE WITNESS: Yes.

MR. HECHT: And you compared these carefully with the originals on file with the Commission?

THE WITNESS: Yes.

MR. HEHCT: And you find in all other respects true and correct copies?

THE WITNESS: Yes.

MR. LEVIE: If there's any question, Your Honor, the originals are available for inspection and comparison if

Mr. Hecht wishes.

MR. HECHT: Well, let me reserve it then and at the close of her examination I'll check to make sure since we know that discrepancy.

JUDGE PAINTER: That's Exhibit Nos. 23 and 24?

MR. LEVIE: Correct, Your Honor.

CROSS EXAMINATION

Q (By Mr. Hecht) Miss Chan?

A Yes.

Q Or would you rather I call you Wai? Which would you prefer?

A Miss Chan.

Q Okay, Miss Chan. After January 21 when did you next speak to James Carr?

A I believe either the 24th or 25th. I'm not so sure.

Q What did you say to Mr. Carr and what did he say to you?

A Okay, I don't know which day, okay. I just told him I need the address and the name of the person to whom I should send the confirmation to, because I have to confirm the change of the name for the depositories.

Q Is that confirm the name of the depository or the account in Greenwich, Connecticut which was originally

Lloyd, Carr & Company, spelled out, and to reflect the name change or just that it was carried Lloyd, Carr & Co., C-o.?

A I had send out, one, two, three, four confirmations. I don't recall, you know, exactly which. I did call him.

Q Okay, other than discussing those bank confirmations with Jim Carr you had no other discussion?

A No.

Q Okay. And subsequent to that discussion did you have any discussions with Mr. Carr?

A No.

Q Did you have any discussions with me?

A No.

Q And do you recall filing an affidavit sworn to on February 7, 1977 in the suit by the CFTC against the Respondents in this case in Federal Court?

A Yes.

MR. HECHT: Do you have an extra copy of the affidavit for her?

(Witness handed affidavit.)

Q (By Mr. Hecht) Do you remember signing that affidavit?

A Yes.

Q And did you prepare this affidavit or was it prepared for you?

A It was prepared for me.

Q Would you please take a look at paragraph 11? Okay, how did you become aware that on October 1 Lloyd, Carr Financial filed an application with the CFTC?

A I believe either -- I think early February.

Q Well, you mean when you went up to audit, or look at the books and records of Lloyd, Carr you never asked to look at the original application?

A I didn't even know they have an application by then. I thought the first time they have this is by January 17 -- January 16, I think is the first time.

Q Okay, so, you first became aware of that when you filed -- prepared -- signed this affidavit on February 7?

A A day or two before that, anyway.

Q Okay. And in the second sentence you said that the application was returned on October 12 for failure to enclose a required document and for failure to include certain biographical data? Do you see that statement?

A Yes.

Q Do you recall making that statement in your affidavit?

A I was told that.

MR. LEVIE: Your Honor, I assume Mr. Hecht would have no objection if I give Miss Chan the exhibits which go with this affidavit?

MR. HECHT: I'm just going from the affidavit.

JUDGE PAINTER: Let's stick with the affidavit right now.

Q (By Mr. Hecht) And you were aware that this affidavit was being used in litigation that was trying to put Lloyd, Carr & Co. out of business?

MR. LEVIE: Objection to the characterization?

JUDGE PAINTER: Sustained.

Q (By Mr. Hecht) Okay, were you aware of the use of this affidavit?

A I just tell the truth of what I believe. That's it.

Q Were you told what the Commission was trying to do and how they intended to use this affidavit?

A No, they just told me to say whatever is true. That's all.

Q Would you please take a look at the cover page of your affidavit?

(Witness complies.)

Q (By Mr. Hecht) And doesn't it say there next to the caption what it's in support of?

A Yes.

Q Okay, so you knew at the time you prepared the affidavit that they were going to use it for something, didn't you?

A Could --

MR. LEVIE: Your Honor, may I request a proffer at this point? It is certainly well beyond the scope of direct examination, and also beyond the scope of this person's direct involvement.

She testified to facts that came to her knowledge.

JUDGE PAINTER: What are you trying to show, Mr. Hecht?

MR. HECHT: I think it goes directly to credibility, Your Honor. It couldn't go more directly to it than a sworn statement under oath, and I want to know the basis. And if there were no basis then you can show they made sworn statements under oath to something they had no knowledge of I think it goes directly to the heart of credibility.

JUDGE PAINTER: Mr. Levie.

MR. LEVIE: In that case, Your HOnor, I would assume that Mr. Hecht out of an interest to fairness would have no objection providing her with the exhibits that were attached to this, and as Mr. Hecht well knows this is an affidavit based on information and belief. Information furnished to her by other people.

MR. HECHT: Absolutely not true.

JUDGE PAINTER: It's my understanding, Mr. Hecht, that this Witness has stated that she signed the affidavit at the request of some party. That she had been advised of the truth of the statements made, or she was informed of certain facts that she had not been aware of earlier.

MR. LEVIE: I'll call Your Honor's attention to the final sentence in this affidavit.

"I have read the foregoing affidavit and it is true and correct to the best of my knowledge, information and belief."

MR. HECHT: That's exactly my point. It says knowledge in there. It doesn't segregate out information and belief, and --

JUDGE PAINTER: Yes, Mr. Hecht, but I think you made the point that Miss Chan was unaware of the October application until a day or two prior to this affidavit.

MR. HECHT: It also ties into a discussion she had with Mr. McCarthy of exactly why they were sent up there on such short notice too.

JUDGE PAINTER: Well, why don't you examine her over that discussion with Mr. McCarthy?

MR. HECHT: Your Honor, I want to do it my way, if I can.

JUDGE PAINTER: Do so then, Mr. Hecht.

MR. LEVIE: Is Your Honor overruling my objection, then.

JUDGE PAITNER: I forget now what the question was you're objecting too, Mr. Levie?

MR. LEVIT: I believe the question, Your Honor, dealt with Miss Chan's knowledge as set forth in her affidavit of becoming aware that the application of Lloyd, Carr Financial Co. had been returned on October 12 for failure to enclose a required document. Miss Chan --

JUDGE PAINTER: Let me ask you then. You said you learned of this October application a day or two before you signed the affidavit, is that correct?

THE WITNESS: Yes, approximately.

JUDGE PAINTER: Why don't you tell us about the circumstances that led up to -- tell me about the circumstances leading up to the making of the affidavit. Who asked you to do it? How did you verify the truth of some of the statements made there? How did you know it was true that they made an application in October?

THE WITNESS: Okay, because I saw it.

JUDGE PAINTER: Someone brought it to you?

THE WITNESS: Yes.

JUDGE PAINTER: Who brought it to you?

THE WITNESS: I went to -- like, in our office, auditing department and registration departments are right next store. So, I was told they have an application for October 1 because I wasn't aware then. So, I went to the registration department to take a look at it, and then

I find out there is one.

JUDGE PAINTER: But you did that because it was in this affidavit?

THE WITNESS: Yes.

JUDGE PAINTER: You wanted to make sure it was true before you signed it?

THE WITNESS: Yes.

JUDGE PAINTER: Mr. Hecht, I'm sorry about the interruption. I --

MR. HECHT: It was in other things too, Your Honor.

Q (By Mr. Hecht) But isn't it a fact that prior to January 21 you were unaware that Lloyd, Carr & Co. had previously filed an application other than Division of Enforcement's Exhibit 23? Or the attachment to that?

A Okay, let me put it this way, okay. I know when an applicant wants to apply for registrant, okay, as an FCM. They're supposed to have 1-FR and 1-R. So, when Mr. McCarthy assigned me to audit Lloyd, Carr Financial Co. he only gave me the form 1-FR which is the financial part. I don't know anything about the registration -- I mean the form 1-R.

I assume that they will be 1-R, but I don't know when that was dated or anything.

Q Well, isn't it a fact that if you look at Division of Enforcement Exhibit 23 that that 1-FR must have represented some period subsequent to December 31, 1976?

MR. LEVIE: Your Honor, on the face Division Exhibit 23 says "financial condition as of December 31, 1976."

MR. HECHT: That's what --

JUDGE PAINTER: That's what he's asking the Witness to refer to.

THE WITNESS: Can you repeat your question. I get lost.

MR. HECHT: I ask the Court Reporter if he can ask that last question.

(Question played back.)

JUDGE PAINTER: Will you answer the question, Miss Chan?

THE WITNESS: Okay, I know they were filed after December 31. That's all I know about this.

Q (By Mr. Hecht) And did you ever look at their -- before you filled out this affidavit did you ever -- let me withdraw the question.

Prior to January 21 of 1977 were you aware of this prior application?

A You mean this 1-FR?

Q No, the one before that?

A Okay, let me tell you this. According to our records, okay, for the auditing part this is the one and only one we got, at that time.

Q At that time?

A Yes.

Q And on January 21 were you aware that Lloyd, Carr & Co. was registered as a commodity trading advisor?

A I --

MR. LEVIE: Which company, Your Honor?

MR. HECHT: Lloyd, Carr Financial.

THE WITNESS: You mean January 21?

Q (By Mr. Hecht) Right?

A I wasn't aware.

Q Did you ever look into the Commission files?

A As I said it before I'm just for the financial part.

Q Okay, and for a CTA, commodity trading advisor, what are the record keeping requirements for a commodity trading advisor?

MR. LEVIE: It would seem, Your Honor, that this Witness is not the proper person to ask. The regulations speak for themselves, and the statute speaks for itself.

JUDGE PAINTER: If you can't answer the question just say you can't answer it?

THE WITNESS: I don't want to give you false information because I just handle with FCM's. That's all.

Q (By Mr. Hecht) You mean you've never handled a commodity trading advisor, audited the commodity trading advisor's books and records?

A As far as I know we don't have any, you know, set of rules for it, yet. I mean for our auditor to go out and examine it.

Q Okay, do you know when these financial requirements as to an FCM became applicable to commodity option dealers?

A I'm sorry. I mean, I got lost. Can you repeat it?

Q Okay. Well, going through your affidavit they discuss certain regulations promulgated by the Commission. Like Paragraph 12. If you'd take a look at that, these rules required such persons to keep and maintain certain books and records, and to make such books and records available for inspection by Commission personnel.

Do you see that at the bottom of Paragraph 12?

A Yes.

Q Isn't it a fact that those regulations were withdrawn in November?

MR. LEVIE: Objection, Your HOnor. It calls for a legal conclusion of this Witness. It's far beyond the scope of direct, and Mr. Hecht can read the regulations himself as published in the Federal Register and ascertain the effective dates.

JUDGE PAINTER: Thank you, Mr. Levie. I --

MR. HECHT: She has filed an affidavit, Your Honor, that in effect says that these people were on notice of certain record keeping requirements as of a certain date, and I think that if her job is to inspect FCM's she should know, and if she doesn't know she should so state, if and when these particular regulations were withdrawn.

JUDGE PAINTER: It's my understanding, Mr. Hecht, you wanted to limit this to January 17 to February 23, is that correct?

MR. HECHT: No. As to the sales aspect, yes. However, as to the prior -- because she is going back now as to what records were required, by when, and whom.

JUDGE PAINTER: I'll overrule the objection.

Answer to the best of your ability. If you can't answer it don't answer it.

THE WITNESS: Okay, as far as I know, okay, FCM or applicant for FCM they should have -- they are required to have books and records.

Q (By Mr. Hecht) I know that, but the question I asked is, you have filed an affidavit which implies that Lloyd, Carr was on notice as of October 8 that they were required to keep certain books and records.

MR. LEVIE: Objection, Your Honor --

MR. HECHT: At some time in the future.

MR. LEVIE: Number one, if Your Honor will read paragraph 12 --

JUDGE PAINTER: No one has bothered to provide me with a copy of the affidavit so I can't read it very well.

(Judge sur[illegible] copy of affidavit.)

JUDGE PAI[illegible] Thank you.

I believe Mr. Hecht is fully entitled to question Miss Chan on the contents of her own affidavit.

MR. LEVIE: But, Your Honor, if I might state my position.

JUDGE PAINTER: Yes.

MR. LEVIE: He is characterizing Paragraph 12. There's nothing in there about what Lloyd, Carr Financial Co. knew or didn't know. It just says that on October 8 these regulations were published in the Federal Register. In fact they were. Mr. Carr has already testified to the fact he became aware of these some time in October of that year.

JUDGE PAINTER: I think he's made the point well, Mr. Hecht.

MR. HECHT: I think Your Honor --

JUDGE PAINTER: You asked her whether this put Lloyd, Carr & Co. on notice?

MR. HECHT: Well, no. I'm also asking her is she aware that these regulations were subsequently withdrawn. That's not asking for a legal conclusion.

JUDGE PAINTER: Are you aware of that, Miss Chan?

THE WITNESS: I wasn't aware.

Q (By Mr. Hecht) Now, you testified before that you were not aware that Lloyd, Carr Financial was registered as a CTA?

A (No response.)

Q And in paragraph 13 you state that Lloyd, Carr & Co. became registered as a CTA on November 19, 1976?

A Yes, I was told. I mean, everything is after my visit to Lloyd, Carr Financial Co.

Q Who told you?

A I believe it is Mr. Richard Levie.

Q Did anyone else participate in that conversation?

A This point was brought up we were preparing, like, this affidavit. He informed me of certain information and showed me documents so I believe it is true.

Q Can you try to speak up for me a little. The microphones aren't picking up.

A Okay.

Q And --

MR. LEVIE: Does Mr. Hecht wish the answer played back?

MR. HECHT: Yes, if we can hear it.

(Question played back.)

Q (By Mr. Hecht) Would you please take a look at paragraph 15, the next paragraph.

A Yes.

Q Would you please read that and then after you've read it would you advise this tribunal of the basis for your statements in that paragraph?

A Okay, this No. 15, okay, this is all I was told.

Q Who told you?

A Mr. Richard Levie.

Q And would you look at paragraph 16. Who told you that?

A Also by Mr. Richard Levie.

Q And paragraph 17?

A Okay, this is -- this one here I'm aware of -- paragraph 17, the 1-FR.

Q It doesn't say 1-FR, does it?

A Because to me an application means 1-FR and 1-R.

Q But if you take a look -- but you became aware, didn't you, in your affidavit before that in paragraph 11 that they also filed on October 1, 1976?

A No, this is afterward.

JUDGE PAINTER: I think the witness has testified she didn't know about the October thing until about a day or two before she signed the affidavit, Mr. Hecht.

MR. HECHT: I know that. It's a very important reason, Your Honor. It doesn't go only to credibility.

Q (By Mr. Hecht) Isn't it a fact that you became aware that the filing that you were originally given by Mr. McCarthy on January 18 was an updated version of the filing on October 1?

A Okay, let me say this. This is Exhibit 23 --

Q No, I'm talking about the --

JUDGE PAINTER: Let's hear her answer.

THE IWTNESS: As I stated before, I am only in the financial part. The only record we got is the form 1-FR.

Q (By Mr. Hecht) Because that's the one they wanted you to check?

A Yes.

Q That's an updated one?

A Wait, I'm sorry.

Q And --

JUDGE PAINTER: Let's hear her answer, Mr. Hecht.

THE IWTNESS: I don't know if they file only one or if they have, you know -- this is the only one I got as of January 18.

Q (By Mr. Hecht) Did you ever look at the prior financial statements of Lloyd, Carr Financial on file with the Commodity Futures Trading Commission?

A I did, and the whole file is over here and a -- they don't have it.

Q They weren't required under a CTA to file anything, were they?

A I don't know anything about CTA. I just know about FCM's.

Q Okay, but there was still in the files some financial data with respect to Lloyd, Carr other than the 1-FR that Mr. McCarthy gave you on the 18th of January, wasn't there?

A I mean, according to our files, okay, the accounting part of records we only have files for FCM's, and all I know is this is first one and only one we got.

MR. LEVIE: That's Division Exhibit 23, for the record?

THE WITNESS: Yes.

Q (By Mr. Hecht) Did you ever look in the files to see if there was any other financial information with respect to Lloyd, Carr Financial Co. of the Commission?

MR. LEVIE: What is financial information and in what registration?

JUDGE PAINTER: Well, let's find out if she looked and if she found something?

MR. HECHT: That's all I'm asking.

THE WITNESS: To the best of my knowledge, okay, we only have one file for it, and that's the file and that's only one we have.

Q (By Mr. Hecht) Okay, but your particular branch does not handle CTA's, commodity trading advisors?

A That's to my knowledge.

Q Is there another branch that handles CTA's or another person?

A I believe it's Mr. Cooper, registration.

Q After the conversation on January 24 and January 25 with Mr. Carr you've never spoken to him again?

A No.

Q Except maybe saying hello to him during this hearing?

A I doubt that either.

Q Isn't it a fact that after January 20, 1977 you never advised anyone in writing or Lloyd, Carr Financial or Lloyd, Carr & Co. of what you considered to be deficiencies in their books and records?

A Okay, our agency there's a procedures. After I finish the audit I turn the whole thing over to my supervisor. He reviews it, and based on my audit report he gives me instructions, the branch chief gives me instructions to write to them, or what to do. But in this case he told me not to write any correspondence.

Q Isn't it a fact that in certain documents you gave me -- in -- okay, when did you file your report with Mr. McCarthy?

A Early February, before the day -- the first trip we got in Boston.

Q And in fact at the time you filed that report with Mr. McCarthy you knew that the Division of Enforcement was planning to institute an action against Lloyd, Carr?

A After I prepare my report?

Q No, before you prepared this report to Mr. McCarthy isn't it a fact that you were aware, either from Mr. Levie or Mr. Stewart, that the Division of Enforcement was intending to take action against --

A Yes, when I came back from Boston.

Q Did they tell you why?

A Yes.

Q And isn't it a fact that they told you why is because Lloyd, Carr & Co. had been in litigation with them on these new regulations?

A No.

Q Isn't it a fact that Mr. Stewart told you that they did not have any customer complaints at or against Lloyd, Carr & Co.?

A I didn't discuss with him anything.

Q Well, isn't it a fact that -- you read the Complaint in this action, haven't you?

A Yes.

Q And isn't it a fact that the Complaint basically alleges two sets of violations? One is doing business while not yet registered as an FCM, and the other record keeping so that you're unable to ascertain the financial condition of Lloyd, Carr & Co.?

MR. LEVIE: Objection, Your Honor.

First of all, it's a mischaracterization of the Complaint. Secondly, the Complaint speaks for itself.

MR. HECHT: I'm asking what she's aware of.

JUDGEPAINTER: We have before us here an auditor and I don't think I can hold her to any strict interpretation of --

MR. HECHT: I'm asking her generally. I don't --

JUDGE PAINTER: Let's not require her to tell us what's in the Complaint. I think maybe lawyers argue what's in it.

Q (By Mr. Hecht) Okay. But you understand there's nothing in there about fraud? Do you understand that? Or misrepresentation to customers?

JUDGE PAINTER: Again, I would prefer, Mr. Hecht, that you did not inquire of the auditor as to what is or is not in the Complaint.

Ask her about her conversations with Mr. Levie, Mr. Stewart, anyone else about whether this Complaint might have been based upon something other than --

Q (By Mr. Hecht) Okay, were you aware of this litigation prior to January 19?

A No.

Q You hadn't read about it in the newspapers?

A Lloyd, Carr, no.

Q And you heard no discussion about this amongst the staff?

A No.

Q Aren't you all in -- are you in the New York office?

A Yes.

Q And isn't it just like one big room with a couple of small offices around it?

A Let me say, all I heard about is British American, nothing about Lloyd, Carr.

Q Did you know that the two named Plaintiffs were British American and Lloyd, Carr in that suit?

A No, I just heard about British American.

Q But you knew about the litigation?

A I don't know what you mean by that.

Q You knew about the regs litigation then, because the name of the case was British American and Lloyd, Carr against --

JUDGE PAINTER: I think she's answered the question pretty well, Mr. Hecht.

MR. HECHT: Okay, I'll go on, Your Honor.

Q (By Mr. Hecht) So, you never wrote a formal letter to Lloyd, Carr & Co. or advised them orally after the 21st of what you felt the deficiencies were in their record keeping?

A No.

Q And to your knowledge did Mr. McCarthy ever write them a letter?

A According to the record I have here, no.

Q So, how is Lloyd, Carr supposed to know what the specific deficiencies are?

A I cannot answer that question.

Q To your knowledge has anyone in the audit division ever advised Lloyd, Carr of what they contend to be the specific deficiencies?

A I believe there's some telephone conversation between Mr. O'Brien and Mr. Carr.

Q Did anyone ever write them, to your knowledge?

A In writing, I don't know.

THE REPORTER: May I have a moment, Your Honor?

JUDGE PAINTER: Yes,

Off the record.

(Short recess taken.)

JUDGE PAINTER: Back on the record.

Q (By Mr. Hecht) Getting back to the middle of January, Miss Chan, were you aware that on Juanuary 14, 1977 the general counsel filed a document in the Second Circuit Court of Appeals that said that the Plaintiff, Lloyd Carr, had not even applied for registration?

A No, I wasn't aware.

MR. HECHT: Your Honor, I would like the Court to take judicial notice, and I will file as an exhibit, page 1659 of the joint appendix. And I'll just put in that page specifically rather than the whole commission document, which is entitled Memorandum of the Commodity Futures Trading Commission and its members in opposition to Plaintiff's motion for a "stay" pending appeal.

JUDGE PAINTER: And you will have that xeroxed and mark it for identification at a later time.

MR. HECHT: Yes, and I would like to move for its admission as part of an official record filed with the Court--

JUDGE PAINTER: Well, let's wait till you get the copies to move for its admission.

Q (By Mr. Hecht) Were you aware of that? That it so advised the Court?

A No.

Q Okay.

And were you aware that on January 18, the original time stamped application of Lloyd Carr and a copy of the cancelled check were furnished to the Second Circuit Court of Appeals, showing that they had filed on October 1, 1976 for FCM application?

A No, I wasn't aware.

MR. HECHT: Your Honor, that would be respondents' Exhibit NO. 9.

Your Honor, I'd like admitted into evidence as Respondent's Exhibit No. 10 page A707 of the record on appeal which is a photostatic copy of a cancelled check. And page A708, which is the back of a copy of that check, as REspondents' Exhibit No. 10.

(Respondent's Exhibits Nos. 9 & 10 were marked for identification.)

MR. LEVIE: Your Honor, I would object to this. It's a check that Mr. Carr could testify to. It obviously has no probative value in and of itself. No foundation has been laid to it-- for it, rather. Merely the fact that its been stuck in a joint appendix to a case on appeal doesn't give it any probative value in this case.

JUDGE PAINTER: I will reserve ruling on the matter until you have xeroxed these pages and furnished me with a copy, Mr. Hecht.

MR.HECHT: Okay.

Q (By Mr. Hecht) And isn't it a fact that on January 18, when you discussed this with Mr. McCarthy, did he tell you that the CFTC had represented to the Second Circuit Court of Appeals that if they wanted to audit-- that the CFTC had advised the Second Circuit that they would expeditiously process Lloyd Carr's application?

A No.

Q Did he tell you anything about the circumstances?

A No.

MR. LEVIE: Your Honor, to properly cross examine, you must have some basis in fact for asking the questions. Now, is Mr. Hecht prepared to make a proffer that he has some basis in fact that Mr. McCarthy had this knowledge and, hence, was even in a position to have appointed Miss Chan--

JUDGE PAINTER: Mr. Hecht, I assume, is basing these questions on the fact that the witness has stated that ordinarily she would write a letter after an audit. And in this case, it went to a Mr. McCarthy. And we understand from her testimony that she is unaware that Mr. McCarthy ever sent a letter.

Now, Mr. Hecht is apparently trying to find out why things did not fall under the normal--

MR. HECHT: No, no. Your Honor, I'm going back to the circumstances of why and how Miss Chan was sent up to audit the books and records. And with that in mind, in view of Judge Tauro's ruling, I would like Mr. McCarthy available for our rebuttal case. And the right to recall Miss Chan after examining him.

JUDGE PAINTER: Continue with your examination. Why don't you ask Miss Chan what she does know, though?

MR. HECHT: But I'd like this on the record because we're up in Boston and that's part of the stipulation that you will furnish me such staff witnesses that are important.

JUDGE PAINTER: Is Mr. McCarthy available, Mr. Levie?

MR. LEVIE: He's in New York, Your Honor. I don't know what his availability is. The understanding with Judge Tauro is they would tell us who they wanted. They gave a list of four people. And I assume that if Mr. Hecht will give me any sort of reasonable notice -- ie.: like this afternoon for tomorrow -- when he intend to call them, we'll make an effort to produce him and put him on notice that he will be called.

JUDGE PAINTER: All right, Mr. Hecht, you give Mr. Levie-- you'd better inform Mr. Levie at least by tomorrow morning when you want him in this proceeding because when we're through, we're going to be through.

MR. HECHT: Your Honor, the answer is yes.

MR. LEVIE: Just give me a ballpark figure as to when and we'll put him on notice right now.

JUDGE PAINTER: When would you like to have him present to testify?

MR. HECHT: Today is Tuesday. I would know the day before, I presume on either Thursday or Friday.

MR. LEVIE: So we'll have one days notice.

JUDGE PAINTER: Good enough. Is that the only additional witness you're going to call, Mr. Hecht.

MR. HECHT: As far as I know for a staff witness in rebuttal and a right to recall Miss Chan after. Since he wants me to lay a foundation, I will lay a foundation.

Q (By Mr. Hecht) Now, with respect to your prior experience, have you, other than Lloyd Carr and Company, prior to January 20, 1971, have you ever audited a commodity option dealer?

A Yes, I did.

Q What was the name of that dealer?

A It's Crown Colony.

Q And when you were up at Lloyd Carr, did you also advise Jim Carr that you had also done the work on Crown Colony?

A No, I did not.

Q Now, in connection with that audit, did you work with a gentleman by the name of Marvin Jackson?

A Which audit?

Q Of Crown Colony.

A No.

Q Did you participate in the audit of Crown Colony's books on December 1, 1976? Or just prior to December 1, 1976?

A Can I look at my stuff to tell you this?

Q Yes.

JUDGE PAINTER: Is there some reason you're going over this line of questioning?

MR. HECHT: Yes

MR. LEVIE: May we ask for proffer on it?

JUDGE PAINTER: I'd like to hear it.

MR. HECHT: Okay,the proffer is that one of the points she made about Defendent's Exhibit No. 23 is that Lloyd Carr mistakenly put in in Item 7, equities on deposit with other brokers, non-segregated, the so-called haircuts, and also set up an offsetting liability, and I'm showing that at that time that was consistent with the then current interpretation of these rules by the audit staff.

MR. LEVIE: Number 1, if I might . . .

JUDGE PAINTER: Mr. Levie

MR. LEVIE: I believe first that that is a mischaracterization of her testimony on Direct, but more importantly, Your Honor, as Mr. Hecht well knows, the complaint in this case does not charge the respondent with failure to meet the minimum financial requirements and what they are charged with is failure to keep proper books and records and in that regard with respect to their books and records, did Miss Chan testify on Direct Examination to certain items within the 1-FR, which is Division Exhibit 23, that are estimated, that were incorrect and which would not be substantiated with underlying documents. It has no relevency as to whether it was properly included or excluded.

JUDGE PAINTER: Mr. Hecht, I'm impressed with the objection. Now, you can't try Crown Colony and the Commission.

MR. HECHT: We're not. It's very important, Your Honor, that the staff here has had inconsistent positions with respect to what records were required throughout this period, what computations were . . .

JUDGE PAINTER: Just bring up the books. Is there a change in the books and records regarding Crown Colony that you want to talk about, you were talking about financial requirements weren't you?

MR. HECHT: I'm going to read the complaint and I'll give you one of their allegations to decide whether . . . Paragraph F, they alleged that they needed to come up to examine Lloyd Carr and Co.'s books and records and to perform an additional audit to determine whether Lloyd Carr and Co. was presently complying with the records, bookkeeping and the minimum financial requirements.

JUDGE PAINTER: I see nothing in the allegations to the effect that they didn't meet them, I understand that there is a problem on the books and records maintained to even reach that determination. If you could move on beyond Crown Colony, I would appreciate it.

MR. HECHT: The point is, I would like to make that was very important was that she testified on Direct that one of the things that was wrong with the 1-FR was the inclusion of this $170,000.00 item and the off-setting liability and this is the very same audit team that wrote a letter to Miss Arcano which was available to my client and shows that the office of audit and financial review says you must make this computation. So, if it was inaccurate, I'm saying that, yes, but we were following the staff's directive that we knew about that it was part of the record on appeal.

JUDGE PAINTER: Mr. Levie.

MR. LEVIE: Mr. Hecht has had the opportunity to hear Miss Chan's Direct Testimony. He has had the chance to read her report to Mr. McCarthy. And he will note that in both she did not testify that it was incorrect in including it there. What she testified was that he estimated what the amount was: That's the defect, because that shows a failure to keep proper books and records. It doesn't get into whether it was properly included or excluded.

JUDGE PAINTER: I'll sustain the objection.

MR. HECHT: Note my exception, please. And I'd like to proffer, and I know you'll reject it, the copy of the December 1, 1976 letter from the CFTC's Mr. Marvin Jackson, who is the Acting Branch Chief of the Office of Audit and Financial Review, Division of Trading and Markets, Eastern REgion sent by certified mail to Ms. Josephine Arcano.

JUDGE PAINTER: Can you get your copies made, I will have that admitted into the record.

MR. HECHT: Can I just show it to her to ask her some questions on it?

JUDGE PAINTER: I'm sustaining the objection and I want you to get onto the material that she's testified to and whatever you're going to bring up. As I understood her testimony, Mr. Hecht, she's pointed out what she thought were some deficiencies in your records. I don't believe she stated categorically that Lloyd Carr and Co. did not meet the financial requirement, except they didn't have any proof of it.

Q (By Mr. Hecht(Isn't it a fact that, even in that report you prepared in connection with the litigation in federal court, you put in that Lloyd Carr just about twice exceeded the minimum financial requirements?

MR. LEVIE: Which report in connection with federal litigation?

Q (By Mr. Hecht) The one Mr. Levie was referring to on February 2. Your report to Mr. McCarthy?

A Okay, that's the report I prepared based on a record which Lloyd Carr Financial Co. furnished me.

Q -- Didn't you specifically say that the minimum financial standards required by the Commodity Exchange Act are met as follows -- setting forth what their adjusted working capital was, less $50,000. And that there was an excess of adjusted working capital of close to $50,000?

A Yes. This amount over here is-- the way this amount arrived is by combining Lloyd Carr & Co. and Lloyd Carr Financial Co.'s assets.

Q And you excluded certain assets, too, didn't you? In making that computation. For instance, the Greenwich bank account that was in the name of Lloyd Carr & Company spelled out. And it should have been, according to your staff, in the name of Lloyd Carr & Co., C-o.?

MR. LEVIE: Objection. Irrelevant. They're not charged with failing to meet, or meeting, or failing to meet the 50,000.

JUDGE PAINTER: Let's have the witness answer this question. And then I do hope we can move on to something that's more relevant to this hearing, Mr. Hecht.

MR. HECHT: I think it is relevant, Your Honor.

THE WITNESS: Okay, to arrive this 49,350, I include both banks. Which means I included the bank with United Trust Company under the name of Financial Co., under the name of & Co., and the one at some other bank in Greenwich. It says, And Company. The three banks, I included to arrive at this figure.

Q (By Mr. Hecht) Is it the normal policy of the Division of Audit that, after reviewing someone's books, that they furnish a written comment letter to the registrant?

A Regarding what?

Q Regarding what the deficiencies are.

A Yes, that's the general procedure.

Q And exclusive of Lloyd Carr' & Co., do you know of any other company that has never received such a letter?

A Okay, it depends. Okay, like, if-- only for applicants I don't know. But for ordinary FCM, we-- you usually send it.

Q A letter?

A Yes.

Q And isn't the purpose of that letter to give the registrant an opportunity to correct the deficiency?

A I guess so.

Q And isn't it a fact that no such letter was ever sent to Lloyd Carr?

A That's a fact, yes.

Q And isn't it a fact, then, that Lloyd Carr & Co. never knew what specifically to correct?

MR. LEVIE: Objection, as to how she would know what

Lloyd Carr knew. And again, mischaracterization of testimony. She testified that for FCMs, they usually don't send letters. And she said she doesn't know about applicants. And Lloyd Carr was an applicant.

JUDGE PAINTER: I'll sustain the objection as to that last question.

Q (By Mr. Hecht) Did you know that Lloyd Carr was an applicant for FCM registration?

A Okay, let me put this way. As of January 18, I know Lloyd Carr Financial Co. is an applicant.

Q And in fact, isn't form 1-FR only for FCM applicants?

A Yes.

Q So you knew that Lloyd Carr-- when you were up there for your audit, you were auditing them as a potential FCM?

A Provided they meet all the requirements and comply with all the regulations of the Commodity Exchange Act.

Q GEtting back to Crown Colony quickly, did you perform that audit before or after January 17?

A Before January 17.

Q Was that in November of 1976?

A No. That was, I believe, as of December 30,31, or something like that.

Q Did you send them a comment letter?

A No.

Q Did you find any deficiencies in their books and records?

A No.

Q Is the president of that company Allen Goldschmidt?

A Yes.

Q And to your knowledge, did he cooperate with the CFTC in its against British American?

MR. LEVIE: Objection. Irrelevant.

JUDGE PAINTER: Sustained.

Q (By Mr. Hecht) Now, do you know when the book and record keeping requirements became applicable to commodity option dealers?

A I wasn't aware when I was up there, up in Boston. If I knew, it was-- I would find under a violation of 32.7.

Q And isn't it a fact that at the earliest would be January 17 of 1977?

MR. LEVIE: For what, Your Honor? It sounds like he's calling for a legal conclusion as to how the regulations are interpreted.

JUDGE PAINTER: Would you restate the question please, Mr. Hecht?

Q (By Mr. Hecht) When did you first become aware that commodity option dealers would be subject to the FCM record keeping requirements?

A Okay, I mean like-- based on my past experience, I know by heart .18-- 1.18 of the requirements. So that I know.

Q And does that require that within one month of the filing, or one month after you're registered, you must have the books and records?

MR. LEVIE: 1.18 speaks for itself, Your Honor.

JUDGE PAINTER: I would sustain the objection, Mr. Hecht.

MR. HECHT: Okay.

Q (By Mr. Hecht) Now, before you said that the company had no cash receipts ledger. Do you recall testifying?

A No, I said they don't have cash receipts journal.

Q A journal?

A Yes.

Q What's the difference between a journal and a ledger? Maybe I'll learn something.

A Okay, a journal records-- the first thing you do with a journal is you record, like the transaction, the whole thing. The customer's name, then you have, say, cash -- $1000. Okay, in a ledger you post that $1000 in your cash ledger.

In the ledger, you do not have the customer's name or any reason for it. Just the amount.

Q But didn't the company give to you what's called an option purchase book, which showed all of the receipts from customers as payment for options?

A I don't recall I saw that book.

Q Let the record reflect that I am handing the witness a book that's around 10x15. And it's a black book, entitled, Option Purchase Journal. And I ask her if this would refresh her recollection?

MR. LEVIE: Is she free to open it and examine it, Your Honor?

MR. HECHT: Yes, she is.

THE WITNESS: I didn't see this book before.

Q (By Mr. Hecht) You've never seen this?

A No.

Q Did you ever ask for it?

A Yes. Wait. I don't know what records they have. I just ask them for records to support the data for 1-FR. I mean, they can have 1000 records which they don't have to show it to me.

Q But it's-- isn't it a fact that anything you asked for, they gave you?

A Within my-- the 1-FR financial part, yes.

Q But whatever you asked them for, they gave you, didn't they?

A Yes.

Q And they even permitted you to have the use of their copying facilities to copy whatever you wanted?

A They made a copy for me.

Q So you couldn't be diverted from your work?

A Like, I say, May I have a copy of this statement? The accountant, Mr. Winston, -- you know -- he just gave me the copy of it.

Q -- And were you aware of who the original accountants were for Lloyd Carr?

A No.

Q And did you discuss with Mr. Winston that they were a new firm and had just been called in, and were working on setting everything up?

A Yes.

Q And did Mr. Carr discuss with you why he called in a major New York accounting firm?

A Yes. He said you referred those two accountants to them.

Q You mean, I gave him a list of three accounting firms and he picked one?

A I don't know how many you gave him. But he did say, These two gentlemen were referred by you.

Q Did he discuss with you why he had brought in a major accounting firm to help him with the books and records?

A No.

Q Did you ask him?

A No.

Q -- And did you have any discussions with Mr. Winston or his associate, Mr. Rikaty?

A Regarding what?

Q Regarding what the role of Herbert Leviss was in helping set up the books and records?

A Okay, he told me this. Mr. Winston told me this. He said, Mr. Carr is a businessman. He's not like one of us, an accountant. The way he keeps the books is like this, like, in his mind. He did not write down -- you know -- the ledgers or trial balance, things like that.

Then I even ask him these questions because -- like -- he is a CPA. I ask him, How am I going to do an audit of the firm with these records? Okay, these type of records they gave me.

He didn't say anything to me.

Q Well, as a CTA, they weren't required to keep records, were they? Like these that are required by the FCM?

A We-- well, when I went up there to perform an audit, they was an FCM. It was not for CTA.

Q And isn't it a fact that Mr. Winston was up there with Mr. Rikaty on very short notice, and they had just been retained to help set up a record-keeping system since they knew you were coming up on that day, so Lloyd Carr could set up a record-keeping system whcih the CFTC would be fully satisfied with?

A That's what I was told.

Q And isn't it a fact that most of the dealers-- commodity option dealers who were not previously registered as an FCM were totally unfamiliar with the book and record keeping requirements?

MR. LEVIE: Objection, unless he can lay some foundation for her knowledge as to what the other dealers knew or didn't know.

JUDGE PAINTER: Sustained.

Q (By Mr. Hecht) Did you know what the status of the other commodity option dealers' books and records were at that date?

MR. LEVIE: Which date, Your Honor?

Q (By Mr. Hecht) January 17, 1977.

A As I told you, I did one previous audit. And that firm, they did have good books and records.

Q That was Crown Colony?

A Yes.

Q And they had a-- did you say their accountant was very familiar in this field? Dave Weiner.

A I dont know. I just met him once or twice, that's all.

Q are you aware that Allen Goldschmidt used to be with British American?

MR. LEVIE: Objection. Irrelevant and colateral.

JUDGE PAINTER: I don't think it's going to harm the record to ever answer. If you know, say yes. If you didn't--

THE WITNESS: I don't know.

JUDGE PAINTER: All right.

You about finished with your cross, Mr. Hecht?

MR. HECHT: No. Your Honor, I'm going through here my way.

Q (By Mr. Hecht) Isn't it a fact that on a book and record like that option purchase journal-- well, isn't it a fact that Lloyd Carr's sole business is the sale of options-- purchase and sale of options?

MR. LEVIE: Objection.

JUDGE PAINTER: Sustained.

This is an auditor you're dealing with here, Mr. Hecht. Aren't you supposed to be questioning her on the results of her examination, and why she went there?

Q (By Mr. Hecht) Based on your examination, did you see any other sources of income for Lloyd Carr & Co. other than the sale of options?

A Okay, lets put it this way. Based on the records -- you know -- which they have, the only thing I can say is from the sale of options. But that's the only records they gave me. I don't know anything else.

Q And how would you say their records were with respect to customer information? Would you say they were in very good shape as far as the records specifically relating to what the position of the customer was? And the accounts of the customers?

A Okay, Mr. Carr cannot show me a summary like a total of how many options-- number of options and the amount of money they have in holding or something or collect from customers.

Q But if you wanted to ask about a particular customer, like John Smith, was all the information available and well-maintained with respect to the individual customer?

MR. LEVIE: What type of information?

JUDGE PAINTER: I think the question's well put.

THE WITNESS: Okay, see, like, they have a file on 3x5 index cards. That card shows the customer's name, and the number of options that they have.

Q (By Mr. Hecht) And don't they also have the eight part form, too?

A Okay, in order for me to obtain the information I need, I had to go through the whole thing. But as I stated, I'm an auditor. I cannot keep books for them to check the whole thing.

Q No, but the information was there. All the information with respect to finding out about a particular customer, was it there and made available to you?

A Okay, see, the only thing I'm interested in when I went up there is how much mone [illegible] we the customer. I don't care-- you know--

Q That's exactly right.

And were those basic records there?

A I cannot be certain that I have every single one because

I don't have the control-- the total to verify it.

Q But on the ones that you looked through, isn't it a fair statement to say that their records with respect to each customer are accurate and well-maintained? Even as of January 21?

A Unless I confirm the customers-- each individual customers, otherwise I couldn't say that.

Q When you normally conduct a pre-registration audit, do you confirm all the customers?

A No. But they have a total, okay? They have a ledger. On the ledger it says, customer ledger. They have a sum total there. Then they have each individual breakdown, and they have a tape to total it for me to verify it.

Q But I'm not talking about the total. I'm talking about the individuals.

A But I am-- as auditor, I have-- the amount that's shown on 1-FR is the total.

JUDGE PAINTER: I think it's pretty clear. Even that information that you're aware of, and if it were there, it was very difficult to dig out. And so you really don't know, do you?

THE WITNESS: No.

Q (By Mr. Hecht) Isn't it a matter of just running a tape down?

JUDGE PAINTER: I think the testimony is pretty clear on that, Mr. Hecht.

MR. HECHT: Your Honor, can I ask her just to answer that question? Isn't it just a matter of running a tape down those 3x5 cards?

MR. LEVIE: To determine what facts, Your Honor?

MR. HECHT: That's what I'm trying to figure out from her, what facts. She said she needs a total of something.

THE WITNESS: Okay, let's put it this way. I have to do-- I have to have, like, a form saying that customer A has X amount of options and X amount of premium collect.

Q (By Mr. Hecht) Don't they have a separate customer's ledger there?

A How do I know they have every single one there, without a total controlling it? Could that be possible that one of them is misplaced?

Q It could be possible at Merrill Lynch, too.

JUDGE PAINTER: Let's move on, Mr. Hecht.

Q (By Mr. Hecht) Did you ever check a document entitled, customer ledger?

A They don't have that when I was there.

Q Did you ever ask for it?

A Yes.

Q Did they tell you that they would set up a customer's ledger?

A Yes.

Q And to your knowledge, do you know if one was ever set up?

A To the best of my recollection--

JUDGE PAINTER: I think this would be an opportune moment to recess the hearing, what with the vaccuum cleaner going on next door.

Let's be back here at 9:00 in the morning.

Off the record.

(Whereupon, at 4:50 p.m., the hearing was recessed, to reconvene on Wednesday, March 16, 1977, in the same place.)